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ABSTRACT

This report contains digests of 143 court decisions published in 1970 concerning legal issues of particular significance to teachers. The case digests are arranged by (1) certification and eligibility, (2) salaries, (3) contracts, (4) tenure, (5) school desegregation, (6) teacher-school board negotiations, (7) liability for pupil injury, (8) retirement, (9) civil rights, and (10) miscellaneous. A summary describes some of the major issues and significant cases presented in the report. Related documents are ED 019 744 and ED 030 212. (Author)

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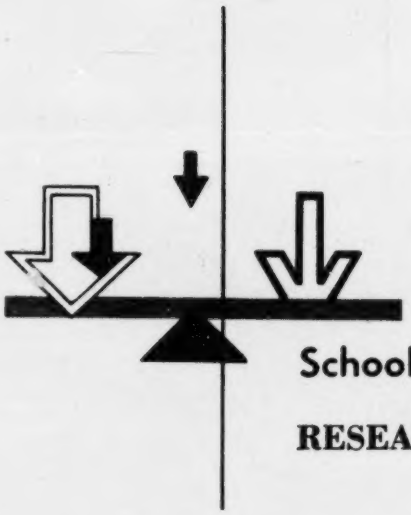

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School Law Series

RESEARCH REPORT 1971-R7

The Teacher's Day in Court: Review of 1970

An Annual Compilation

EA 003 860

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FOREWORD

THE STATE AND FEDERAL COURTS continually rule on issues of concern to public-school teachers in America. This year decisions concerning the civil rights of both tenure and nontenure teachers, professional negotiations, salaries and contracts, and other matters were handed down by the courts. The volume of reported cases reflects the growth of litigation for the adjudication of teacher rights. Not only have fresh legal issues relative to teacher rights been presented, but also courts are being asked to examine and change controlling law in the light of recent constitutional developments. Since professional education personnel, other than the immediate parties to an action, may have their rights and liabilities determined by these rulings, the cases contained in this report should be of interest and importance to all educators.

This report includes those decisions of both state and federal courts published during 1970 where teachers or other certificated personnel were plaintiffs or defendants.

This report was prepared by Jeanette G. Vaughan, Senior Staff Associate, under the direction of Fredia S. Shapiro, Assistant Director.

Glen Robinson
Director, Research Division

INTRODUCTION

THIS REPORT contains digests of 143 court decisions with legal issues of particular importance to teachers. The material in this compilation comes from judicial decisions published during the 1970 calendar year in the *National Reporter System.* While most of the decisions summarized here were rendered in 1970, cases decided earlier but not in print until sometime in 1970, are also included. With some exceptions, litigants in these cases, whether plaintiffs or defendants, were teachers or other professional school personnel in the public elementary and secondary schools and publicly financed institutions of higher learning.

The 143 decisions originated in 37 states. All but four are of a civil nature. The exceptions are two decisions from Illinois and one from North Dakota where teachers were cited for criminal contempt of court for violating injunctions against strikes and picketing. The other noncivil case arose in New Jersey where a teacher was convicted of interfering with school assembly and of trespass on school property. One hundred decisions are products of state courts: 34 from the highest tribunal of the state where the action was initiated, 54 from intermediate appellate courts, and 12 from trial courts whose decisions are systematically published in the reference source used in the preparation of this report. The federal courts were represented by 43 decisions. Fifteen decisions were rendered by federal circuit courts of appeal, and 28 decisions came from federal district courts.

As in other years, New York courts produced the most decisions. This year there were 20 from New York, followed by California with 10. Nine decisions came from Illinois, and eight came from Florida and Wisconsin.

The case digests are arranged under the following 10 topic headings: (a) certification and eligibility, (b) salaries, (c) contracts, (d) tenure, (e) school desegregation, (f) teacher/school board negotiation, (g) liability for pupil injury, (h) retirement, (i) civil rights, and (j) miscellaneous. The one loyalty case this year appears in the miscellaneous section. When there is more than one case from a state under the same topic, the cases are listed alphabetically by title. Table 1 classifies the 143 decisions by state and major issue raised. Cases with more than one issue are cross-referenced.

As in previous years, issues relating to teacher tenure were again the most numerous with 55 cases appearing in this category in 1970. Included in this broad category are cases raising issues of due process rights for teachers without tenure status. Because of the large number of these cases that involve either probationary teachers in tenure states or teachers in states without tenure protection, the topic has been subdivided into two sections. The first section contains those cases involving employees who do have tenure and those cases where the question was raised as to whether the employee did or did not have tenure. The second section contains the decisions concerning the nontenure teacher.

Professional negotiations ranked second in number of cases this year with 25. Salary issues produced 15 decisions. The nine cases in the miscellaneous group included a challenge to the Florida loyalty oath and two cases involving alleged racial discrimination in promotions arising from the same set of circumstances.

The summary that follows describes some of the major issues and significant cases presented in this report.

School Desegregation

An important issue raised in the courts in past years and again in 1970 was the assignment of teaching staffs to schools on a racially segregated basis. The question appears with regularity in school desegregation suits brought by or on behalf of black pupils. Since teachers themselves were not litigants in these cases, the summaries of the decisions are not given in this report, but may be found in *The Pupil's Day in Court: Review of 1970*, a companion school law publication of the NEA Research Division.

Included in this report, however, are six cases involving school desegregation where teachers were concerned directly as litigants. Two of the cases were initiated by black administrators in Southern states. In the Alabama case the central-office job of a black administrator was abolished, and in the Louisiana case two black principals were reassigned to positions of coordinating principals which they claimed were demotions. The federal appellate court in the former case found substantial evidence to support the decision from an administrative and educational viewpoint and held that the educator had not proved that the action was arbitrary or discriminatory. In the latter instance, the federal district court held that the reassignments were promotions but said that if in practice this did not prove to be so, the principals would be ordered reinstated in their former positions.

In an Arkansas decision, the United States Court of Appeals for the Eighth Circuit ordered three of four dismissed black teachers re-employed because the school board had not made proper findings that the teachers were unqualified when school integration necessitated a reduction in staff.

The National Teacher Examination was at issue when the West Feliciana Parish School Board attempted to use it to determine which teachers would be dismissed following a reduction in staff after integration. The Fifth Circuit Court of Appeals remanded the case to the district court for findings of fact as to whether the examination was discriminatory between white and black teachers. More recently, in

a decision handed down in 1971 and therefore not reported in this publication, a federal district court in Mississippi barred the use of the National Teacher Examination when the Columbus, Mississippi, school district sought to require its teachers to score 1000 on the test to keep their jobs. The eight dismissed black teachers who had brought the suit were ordered reinstated. *(Baker v. Columbus Municipal Separate School District*, June 23, 1971,–F.Supp.–)

Tenure Issues

While 55 cases are reported under the tenure topic, 23 of these actually involved nontenure teachers. In this area, one of the most significant developments is decisions extending due process rights to nontenure teachers in nonrenewal of contract situations. Two leading decisions were from the United States District Court for the Western District of Wisconsin. In *Roth v. Board of Regents of State Colleges*, suit was brought by a nontenure assistant professor whose contract was not renewed. The court held that under the due process clause of the Fourteenth Amendment the professor was entitled to substantive protection against arbitrary nonretention. The court concluded that "the decision not to retain a professor employed by a state university may not rest on a basis wholly unsupported in fact, or on a basis wholly without reason." The court directed the university to comply with minimum standards of procedural due process, including a statement of reasons and a hearing, or in the alternative to offer the professor a contract for the next school year. The second case from the same court, *Gouge v. Joint School District No. 1*, involved two nontenure teachers whose contracts were not renewed for the next school year. The court held, in accordance with the *Roth* decision, that teachers in public elementary and secondary schools were protected by the due process clause of the Fourteenth Amendment. The court also held that the school board's ultimate decision for nonrenewal may not rest on a basis of which the teacher was never notified or to which he had no fair opportunity to respond.

While not citing the *Roth* and *Gouge* decisions, another federal district court in Wisconsin denied the motion of the Milwaukee school officials to dismiss a complaint brought by three nontenure teachers whose contracts were not renewed. The court said that even if the school system had unlimited discretion to discharge the teachers, it did not follow that "such discretion could be exercised without a proper hearing."

Taking the opposite view, however, was a decision of a Massachusetts state court which declined to apply the principles in the *Roth* and *Gouge* decisions to six nontenure teachers dismissed by the Boston School Committee. That court said that it chose to follow "the greater weight of authority" by holding that in the absence of a statute to the contrary, probationary teachers may be dismissed without a hearing. Other courts in considering cases involving nontenure teachers have taken the same view.

On the other hand, the Fifth Circuit Court of Appeals held that in some instances a hearing is required for nontenure teachers. In *Ferguson v. Thomas*, a Texas case, a college instructor lost his bid for reinstatement, but the court laid down certain guidelines that must be followed for those teachers who have an "expectancy of reemployment." The same appellate court applied this reasoning in a Mississippi case where a teacher had been employed for over 11 years by a series of one-year contracts. The court held that although he did not have tenure, his long-term employment was sufficient to give him the expectancy of re-employment that constitutes a protectible interest. Another Texas case, *Sindermann v. Perry*, involved a nontenure junior-college teacher whose contract was not renewed. Since the teacher had alleged that nonrenewal was because of the exercise of his constitutional rights, the appellate court held that the summary judgment by the lower court against the teacher was improper. In remanding the case, the higher court also directed the district court to determine if the instructor had the expectancy of reemployment mentioned in *Ferguson*, and if he did, the procedures regarding a hearing as outlined in that case would apply. If the teacher did not have this expectancy, he must bear the burden of initiating the proceedings and the burden of proving that a wrong had been done.

First Amendment Rights

Two cases this year involved definite questions of the academic freedom of teachers. In one case a nontenure high-school teacher in Alabama was dismissed for assigning a particular short story to her eleventh-grade English class. The federal district court found that the story was appropriate for high-school juniors and that its assignment to the students had not caused any disruption of the education process. In view of its findings, the court concluded that the teacher's dismissal constituted an unwarranted invasion of her First Amendment right to academic freedom and ordered the teacher reinstated. In the second case, the assignment of a magazine article to a senior English class caused the suspension and threatened dismissal of a Massachusetts teacher. The court here also concluded that academic freedom had been interferred with and ordered the teacher reinstated.

Another decision concerning the First Amendment rights of a teacher arose in Missouri when a high-school Latin teacher without tenure alleged that she was not reemployed because of a speech she had made before a professional association that was subsequently published in its journal. The trial court had dismissed the entire complaint and the teacher appealed. The state supreme court directed that the portion of the complaint alleging violation of a constitutional right be reinstated since a school board's right not to rehire a teacher may not be on grounds that violate a teacher's constitutional rights. A federal district court in Indiana found that the constitutional rights of an elementary-school teacher were violated when he was not rehired because of remarks critical of the school administration he had made before the teachers association during negotiations. But a Connecticut probationary teacher lost his suit when a federal district court refused to order his reinstatement. Noting that not all comments made by teachers are entitled to First Amendment protection, the court found that the comments made by this teacher at a public meeting went beyond legitimate criticism in that they were violently abusive and personally defamatory.

Also touching on First Amendment rights of teachers was a loyalty oath case in Florida. The federal district court declared unconstitutional those portions of the oath relating to membership and the giving of aid to the Communist party, and membership in organizations believing in the overthrow of the state or federal governments, but upheld two other portions of the oath. One portion required the taker to swear that he did not believe in the violent overthrow of the state or federal governments. In a decision rendered on June 7, 1971, the Supreme Court of the United States struck down this portion of the oath. The only portion of the oath held constitutional by the Supreme Court was the section requiring applicants to pledge to support the state and federal constitutions.

Other cases involving the First Amendment rights of teachers appear in the section on professional negotiations.

Professional Negotiation

The number of 1970 cases concerned with teacher/school board negotiations exceeded last year's high rate and involved a variety of issues. The cases reported here, however, do not reflect all that were decided in this subject area since few of the trial court decisions appeared in the source material used for this publication.

Four cases in this year's report involved teachers and local associations being found in contempt of court for violation of anti-strike injunctions. Twice in Illinois and once in North Dakota the convictions were upheld on appeal. Teachers in Dade County, Florida, had previously been successful in having their case remanded for a jury trial on the contempt charges, but the convictions were again upheld on appeal.

Teachers in two New York school districts challenged statutory provisions that teachers who are absent from work because of a strike will have two days' pay deducted for each day missed because of the strike. The two trial courts upheld the provisions of the law, stating that the procedures in the law provided sufficient due process for the teachers.

Two Florida cases by the same name, *Orr v. Thorp*, involved different issues affecting Palm Beach County teachers. In the first case a federal district court struck down a statute, applicable only to Palm Beach County, that authorized the dismissal of any supervisory or administrative employee who joined a professional organization. The court found that this statute was a classic example of denial of equal protection. In the second case the local association alleged that policies of the school board were designed to eliminate the organization. The federal appellate court reversed the lower court dismissal of the complaint and held that the teachers had alleged sufficient discrimination that could significantly deter freedom of association and that without further evidence it was impossible to ascertain if the school board could explain or justify its action. Accordingly, the case was remanded for a full hearing.

A Michigan case tested the validity of agency shop. Teachers who were not members of the local association sued the school district and the association challenging the provision. The association was unified and, therefore, the nonmember teachers were required to pay local, state, and national association dues. The trial court had denied relief, and on appeal the appellate court remanded the case for a determination as to whether the payment required of nonmember teachers was proportionate to the share of the cost of negotiating and administering the contract. While it would be inequitable not to require the nonmember to pay his share, if the nonmember share was either greater or less than the proportionate share, the court held, the agency shop provision was in violation of the state public employment relations act.

In one of three cases concerning the scope of the bargaining unit, a New York state appellate court held that a state-wide bargaining unit was proper for professional employees of the state university system rather than an individual unit on each campus as advocated by the State University Federation of Teachers. In another New York case, the National Education Association and the New York State Teachers Association were sued by a local school district in connection with the release by the state association of an "urgent advisory" cautioning teachers not to accept positions in the district. The trial court refused to enjoin the advisory absent a showing of damage to the district.

Impairment of the constitutional rights of teachers was the issue in a case in Bay Shore, New York, when the school district sought to prohibit the local association from distributing all but "routine internal distributions" to teachers in the schools. A federal district court ruled the distribution rule void on its face and in its application as an overbroad prohibition involving First Amendment rights and enjoined the school board from enforcing it.

Other Issues

Other issues presented in this report include two cases involving alleged discrimination in promotions. Teachers in Newark, New Jersey, brought suit in both state and federal courts charging that the acts of the school board in suspending its promotional lists for principals and vice-principals in order to increase the number of black administrators was discriminatory. In the state suit which charged that the actions were in violation of the negotiated contract between the local association and the board, the court concluded that the board had acted lawfully under the particular circumstances existent in the city. The federal court suit charged racial discrimination against white teachers. Holding that proper integration of the faculties of the schools is as important as proper integration of the schools the appellate court dismissed the teachers' complaint.

Participation in an Office of Economic Opportunity Rural Legal Services Program occasioned a suit by two University of Mississippi law school professors. The two had been employed part time by both the law school and the OEO program when the chancellor of the university barred further participation by faculty members in the OEO program. Suit was then brought charging a violation of academic freedom and equal protection. While not holding that the professors had a right to participate in the program, the federal appellate court did hold that since other faculty members were employed part time, these two could not be discriminated against because of the nature of their part-time employment.

TABLE 1.–MAJOR ISSUES IN CASES INVOLVING TEACHERS IN 1970

State	Certification and eligibility	Salaries	Contracts[a]	Tenure[b]	School desegregation	Civil rights	Teacher/school board negotiation	Liability for pupil injury	Retirement	Miscellaneous	Total cases
1	2	3	4	5	6	7	8	9	10	11	12
Alabama	...	...	...	3	2	...	...	...	...	...	5
Arizona	...	1	...	1	...	...	...	1	...	...	3
Arkansas	...	...	1	...	1	...	...	...	1	...	3
California	1	5	...	3	...	...	...	1	...	...	10
Colorado	...	...	...	1	...	...	1	1	...	...	3
Connecticut	...	...	...	1	...	...	...	...	...	...	1
Florida	...	...	1	3	...	...	3	...	...	1[c]	8
Georgia	...	...	...	1	...	...	...	...	...	...	1
Illinois	...	1	...	4	...	...	2	...	1	1[d]	9
Indiana	...	...	1	2	...	...	1	...	...	...	4
Iowa	...	...	...	...	...	...	...	1	...	...	1
Kansas	...	...	1	...	...	...	...	...	1	...	2
Kentucky	...	1	1	...	...	...	1	...	...	...	3
Louisiana	...	1	...	2	2	...	1	1	...	...	7
Maryland	...	1	...	...	...	...	...	1	...	...	2
Massachusetts	...	...	...	2	...	...	1	...	...	...	3
Michigan	...	...	1	1	...	...	2	1	...	...	5
Minnesota	...	...	1	...	...	1	...	...	...	1[e]	3
Mississippi	...	...	1	1	...	1	...	...	...	...	3
Missouri	...	...	...	1	...	...	1	...	...	...	2
Nebraska	1	...	...	...	...	...	...	...	...	...	1
New Jersey	...	1	...	...	...	...	...	...	...	4[f]	5
New Mexico	...	...	...	4	...	...	...	...	1	...	5
New York	...	2	...	7	...	...	10	...	...	1[g]	20
North Dakota	...	...	...	...	...	...	1	...	...	...	1
Ohio	...	...	...	...	...	...	...	...	...	1[h]	1
Oklahoma	...	1	...	...	...	...	...	...	...	...	1
Oregon	...	...	1	...	...	...	...	1	...	...	2
Pennsylvania	1	...	...	3	...	1	1	...	...	...	6
Tennessee	...	...	...	2	...	...	...	...	...	...	2
Texas	...	...	...	2	1	2	...	...	...	...	5
Utah	...	...	...	1	...	...	...	...	...	...	1
Virginia	...	1	...	...	...	...	...	...	...	...	1
Washington	...	...	2	...	...	...	...	...	...	...	2
West Virginia	...	...	...	2	...	...	...	...	...	...	2
Wisconsin	...	...	...	6	...	1	...	...	1	...	8
Wyoming	...	...	...	2	...	...	...	...	...	...	2
Total number of cases	3	15	11	55	6	6	25	8	5	9	143

[a]Also continuing contracts of the spring notification type.
[b]Includes tenure-type continuing contracts and cases involving the rights of nontenure teachers.
[c]Involved the constitutionality of the state loyalty oath.
[d]Involved an action by teachers against the superintendent for slander.
[e]Suit by a teacher for damages and defamation of character.
[f]One case was a suit for malicious interference with contract, two concerned alleged racial discrimination in promotions, and the fourth was a criminal action against a teacher for trespass.
[g]Involved a decision of the Workmen's Compensation Board.
[h]Concerned the question of mootness of a teacher's suit.

CERTIFICATION AND ELIGIBILITY

California

Morrison v. State Board of Education
461 P.2d 375
Supreme Court of California, November 20, 1969.

A high-school teacher whose teaching certificates were revoked by the state board of education sued to compel it to set aside its decision and restore the certificates. The lower court denied relief and the teacher appealed. The certificates had been revoked for "immoral and unprofessional conduct and acts involving moral turpitude" as authorized by section 13202 of the California Education Law.

The charges arose out of a limited, noncriminal homosexual relationship with another teacher in April 1963. Approximately one year later the other teacher reported the conduct to the superintendent. As a result, the plaintiff resigned his teaching position. Some 19 months later the state board conducted a hearing concerning revocation of the teacher's certificate. At that hearing, no evidence was presented that the teacher had ever committed any act of misconduct whatsoever while teaching. Some three years after the original incident the State Board concluded that the event warranted revocation of the certificates.

Section 13202 authorized revocation of certificates for "immoral conduct," "unprofessional conduct," and "acts involving moral turpitude." The court reviewed numerous cases in California and other jurisdictions involving the interpretation of similar language as it applied to professional persons. The court concluded that such language must be construed in the context of the occupation of the persons to whom it applies. In interpreting the terms in question, the court did not feel that the legislature meant to allow the employing agency to dismiss any employee whose personal private conduct it disapproved of. The court interpreted the statutory terms to denote "immoral or unprofessional conduct of the teacher which indicates unfitness to teach." Without such a reasonable interpretation, the court said, the terms would be susceptible to an overly broad application as possibly to subject to discipline virtually every teacher in the state. The court concluded that the board of education could not abstractly characterize the conduct of the teacher in this case as "immoral," "unprofessional," or "involving moral turpitude" within the meaning of the statute without determining that such conduct indicated that the teacher was unfit to teach. Guidelines were set out for the board to follow in making this determination.

The teacher further alleged that section 13202 upon its face or as construed by the board deprived him of his constitutional rights, including his constitutionally protected rights to privacy. As to these allegations, the court said that its interpretation of the section avoids the problem raised by the teacher and that the section would be constitutional.

The teacher also claimed that the record contained no evidence indicating his unfitness to teach. In considering this issue, the court said that under the proper interpretation of the statutes "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court concluded that there was no evidence in the record that the teacher's conduct indicated his unfitness to teach.

In conclusion, the court said that it was not unmindful of the public interest in eliminating unfit teachers. But the power of the state to regulate professions and conditions of government employment must not arbitrarily impair an individual's right to live his private life, apart from his job, as he deems fit. Further, the court made it clear that it was not holding that homosexuals must be permitted to teach in the public schools of California, but rather that "the relevant statutes, as well as the applicable principles of constitutional law, require only that the board properly find, pursuant to the precepts set forth in this opinion, that an individual is not fit to teach." The judgment of the lower court was reversed, and the case was remanded for additional proceedings consistent with the opinion.

Minnesota

McConnell v. Anderson
316 F.Supp. 809
United States District Court, D. Minnesota, Fourth Division, September 9, 1970.

(See page 69.)

Nebraska

Henderson v. School District of Scottsbluff
173 N.W.2d 32
Supreme Court of Nebraska, December 12, 1969.

A teacher who had already signed a contract for the 1967-68 school year resigned on August 11, 1967, to enter business. Complaint was made by the school district to the state board of education that the teacher had violated his contract. After a hearing the state board suspended the teacher's certificate for one year beginning December 8, 1967. This case was originally heard by the lower court on December 12, 1968, and was dismissed as moot since the period of suspension was over. The teacher appealed, however, claiming that he was entitled to a decision on the merits because otherwise he would be adversely affected by

the suspension and his future opportunities to pursue his profession would be limited.

The court did not agree with the teacher. It pointed out that following the decision of the state board, the teacher could have obtained a decision on the merits in the district court but did not. Further, the reason that the teacher resigned was not a "just cause" contemplated by the statute for a contract violation. The fact that the teacher wished to enter some other field of endeavor did not constitute a legal or lawful reason for the violation of his contract. The judgment of the lower court was upheld.

Pennsylvania

King-Smith v. Aaron
317 F.Supp. 164
United States District Court, W.D. Pennsylvania,
October 7, 1970.

A blind teacher was fully qualified and certified to teach in the public schools of Pennsylvania. In order to obtain a state teaching certificate, a person must secure a physician's certificate of no major physical disability, unless such person submits a certificate from his university, certifying that the applicant can perform the duties notwithstanding the disability. When this teacher sought to be placed on the eligibility roles of the Pittsburgh public schools, she took the physical examination required by state statute for appointment to a first class school district. This statute provides that the teacher must present a certificate setting forth that she is not physically disqualified by reason of any acute physical defect from successfully performing the duties of a teacher. The teacher's physical defect was noted on the certificate, but the examining physician recommended that it be waived in view of the teacher's extraordinary qualifications. When the teacher was not placed on the eligibility list for the Pittsburgh schools, she brought this action under the federal civil rights act, alleging that the refusal to place her on the list solely because of a physical handicap constituted a denial of due process and equal protection of the law. The Pittsburgh board of education and other school officials named as defendants moved to dismiss the action for failure to state a cause of action.

The federal court found it apparent from a reading of the teacher's pleadings and brief that a conflict in state law existed. The teacher charged that the school board violated the letter and spirit of the certification law, claiming that its general provisions were controlling. The federal court held that this was a clear case for application of the doctrine of abstention. If the state courts should hold that the action of the school board was unauthorized under state law, the court said, it would not be necessary for the federal courts to rule on the civil rights or constitutional claim. In any event the teacher could preserve her federal claim in any state court suit. The federal court held that the teacher's complaint had not revealed a deliberate, calculated state assault upon a constitutionally guaranteed freedom. Instead, it merely contested the application of a certain standard of fitness for teaching as to whether that standard is authorized by state law, and whether that standard is reasonable. Since this case was not one where state law was clear and settled, nor one where state action threatened a "protected" activity, namely, the exercise of rights of free expression under the First Amendment, the court found no barrier to applying the abstention doctrine and granted the motion of the school officials to dismiss the action.

SALARIES

Arizona

Carlson v. School District No. 6 of Maricopa County
468 P.2d 944
Court of Appeals of Arizona, Division 1, Department B,
May 6, 1970.

This class action was brought for a declaration of teachers' rights under written contracts with the school district. The trial court determined that the school district had the authority to unilaterally reduce the salaries of the teachers below that contained in their contracts. The teachers appealed.

In April 1966, the school district adopted a salary schedule reflecting salary raises for the 1966-67 school year. Prior to July 1966, contracts with these higher salaries were signed by the parties. The school district drew up its budget, making allowance for the higher salaries and for 37 additional teachers. But since the proposed budget exceeded the 6 percent budget increase limitation in the state law, the school district was required to submit it to the county board of supervisors for approval. At the budget hearing, some taxpayers objected and the board of supervisors took the matter under advisement, suggesting that the parties meet and attempt to compromise their differences. Subsequently the school district submitted a new budget which would have been sufficient to pay the contracted salaries and to hire eight new teachers. This revised budget was approved by the county board of supervisors. Thereafter, the school district notified all teachers that their compensation would be reduced as of January 1, 1967. This action followed.

The school district relied upon a portion of the teacher tenure law that provided that "no reduction in the salary of a continuing teacher shall be made except in accordance with a general salary reduction in the school district by which he is employed, and in such case the reduction shall be applied equitably among all such teachers. Notice of a general salary reduction shall be given each teacher affected not later than May 1 of the calendar year in which the reduction is to take effect." In construing this provision, the court noted that it was a limitation on authority of the school district rather than a grant of authority. Because of the restrictive language, the contracts for the ensuing school year could not contain any salary reduction of a tenure teacher unless it was part of a district-wide reduction applied equitably to all tenure teachers and any notice of such reduction must be given them by May 1. The court felt the time limitation was meant to enable the tenure teacher whose salary was to be reduced to reject the contract and to find other employment if he wished. The court held that this section did not give the school district the right to unilaterally reduce salaries of teachers once contracts had been entered into.

The school district next contended that the written contracts of employment necessarily included the state laws relating to limitations on school budget increases. The court said that in this instance it was not a question of the school district being financially unable to meet its obligations. The district had sufficient funds to honor all of the contracts and hire eight additional teachers. The school district budget as adopted, the court said, did not in any way "prohibit or render impossible the performance of these contracts to the full extent of the school district's obligations thereunder."

The court held that the teachers were entitled to receive compensation for their services in accordance with their written contracts. Since no evidence had been presented concerning the amounts due the teachers, or the procedures which might have been followed by the teachers to protect their claims, the case was reversed and remanded to the lower court to determine the rights of the parties.

California

Hunt v. Alum Rock Union Elementary School District
86 Cal. Rptr. 663
Court of Appeal of California, First District, Division 4,
May 14, 1970.

A teacher sought a writ of mandate to compel the school district to advance him one step on the salary schedule and to pay him additional compensation for past years. The lower court dismissed the complaint and the teacher appealed. The school district salary schedule provided for annual increments for teachers who had been on duty at full pay for 75 percent of the school year. Increments are also granted to those who have been absent on military or sabbatical leave. The teacher in this case did not serve the required 75 percent of the school year because he was on sick leave. The teacher contended that the salary schedule, that did not allow for increments for those on sick leave, conflicted with state law and was a denial of equal protection of the laws.

The appellate court found no conflict between the school district salary schedule and state law, for nowhere in the state law were the increments mandatory under these circumstances. The court also found no denial of equal protection of the laws in view of a strong public policy in favor of granting credit to employees on military leave. Sabbatical leave was also distinguishable, the court said, since it was granted for purposes of travel or study that would benefit the schools and the pupils. Thus, the judgment of the lower court was affirmed.

McNickels v. Richmond Unified School District
90 Cal. Rptr. 562
Court of Appeal of California, First District, Division 3,
October 15, 1970.

Three teachers claimed that the school district made wrongful deductions from their salaries for absences while on strike. It was not claimed that the deductions for unauthorized absences were improper; rather, the formula used by the school district for making the deductions was challenged. The trial court decided in favor of the school district and the teachers appealed.

The school district had deducted 1/179 of the teachers' annual salaries for each day of the strike, on the basis of 179 actual teaching days of school for the school year. The teachers maintained that state law requires that 1/282 of their annual salary be deducted. The pertinent statute provided for the compensation of teachers who served less than a full school year and included school holidays and week ends as well as actual teaching days. By this method the term would be 282 days and the deduction for the absences would be less. The statute made no distinction between unauthorized absences and authorized absences. The school district argued that the statute applied only to authorized absences and to apply it to the teachers in this case would result in an unconstitutional gift of public funds.

In view of the clear and unambiguous language of the statute the court concluded that it applied to unauthorized absences, and that the school district erred in failing to use the statutory formula for deductions from the teachers' salaries. The judgment of the trial court was accordingly reversed.

Sayre v. Board of Trustees of Coalinga College District
88 Cal. Rptr. 355
Court of Appeal of California, Fifth District,
July 8, 1970.

A college teacher appealed from the lower court decision denying his application for an order to compel the board of trustees to raise his classification on the salary schedule. The teacher had been employed by the college district in 1963. At that time he had 12 years' prior teaching experience. But since the maximum that the district gave credit for was five years, the teacher was placed on the sixth step of the salary schedule. To facilitate the recruitment of experienced teachers, the district in 1964 changed the salary policy to allow up to nine years' prior teaching credit, but the change did not apply to any teacher already employed. If the change had applied retroactively, the teacher in this case would have been on the tenth step instead of the seventh step.

The sole question presented on appeal was whether this change in policy by the college district was arbitrary, discriminatory, and violative of the section of the education code that provided in part that "uniform allowance may be made in any schedule of salaries for years of training and for years of service. In no case shall the governing board of a school district draw orders for the salary of any teacher in violation of this section. . . ."

The court said at first impression one would be inclined to agree with the contention of the teacher that the board distinguished between teachers solely because of the date of their original employment. On careful consideration, however, the court concluded that a reasonable classification of teachers brought about by policy changes necessitated by employment needs, is permissible. The court reasoned that if the policy change of the board had been in the opposite direction—granting less credit for prior experience—it would not have been permitted to reduce the compensation paid to the teacher nor lower his place on the salary schedule. By the same token, the board could not be compelled to re-classify the teacher upward on the schedule. Accordingly, the judgment of the lower court dismissing the complaint of the teacher was affirmed.

Sheehan v. Eldredge
84 Cal. Rptr. 894
Court of Appeal of California, First District, Division 4,
March 5, 1970.

School teachers employed by Salinas Union High School District sought a writ of mandate to compel the district to revise the salary schedule. The action was brought following a decision of the school board to purchase health insurance for its employees. The teachers who sued contended that the particular plan purchased was more valuable to teachers with dependents than to those without and that part of the cash salaries of teachers were used to purchase this plan and, therefore, the salary schedule should be revised. The trial court dismissed the action and the teachers appealed.

The school district pointed out to the appellate court that the health insurance was not paid for out of payroll deductions but had been purchased out of district funds. The teachers conceded this. The court found that it was within the discretion of the board to purchase the particular plan. Hence, the court held that the petition of the teachers did not present a cause of action and was properly dismissed by the lower court.

Stevens v. Board of Education of San Marino Unified School District
88 Cal. Rptr. 769
Court of Appeal of California, Second District,
Division 5, July 27, 1970; rehearing denied
August 20, 1970.

A classroom teacher sought a court order to compel the school district to pay his salary for six days that he was absent from his duties. The lower court denied relief and the teacher appealed. The teacher was absent on at least 12 days on which he appeared before the Los Angeles County Assessment Appeals Board in connection with an application he had filed to have the assessments raised on certain property owned by the governor and by a corporation.

The teacher's claim for pay was based on a provision of the California education code which permits up to six days of sick leave in any one year to be used for "cases of personal emergency, including any of the following: . . .(c) Appearance in court as a litigant; or as a witness under an official order." The teacher argued that he was appearing in court as a litigant. The court disagreed, holding that a board of assessment appeals was not a court within the meaning

of the education code. There was nothing in the law creating such boards to indicate that they would exercise judicial functions as would a court. Since the teacher was seeking increased assessments on lands, title to which was held by others and in which he had no interest, the court held that he was not appearing in court as a litigant as those terms are used in the law.

The teacher argued also that even if he was not appearing in court as a litigant, his absences should be excused because they were occasioned by a "personal emergency" within the meaning of the education code. Using the definition of emergency as "an unforeseen occurrence or combination of circumstances which calls for an immediate action or remedy; pressing necessity, exigency," the court held that the teacher's appearances before the board were neither unforeseen nor did they arise from a personal pressing necessity or exigency. The court said that it found nothing in the record to indicate that the teacher's voluntary appearances before the assessment appeals board were of such benefit to the school district that it should expend public funds to reimburse him for his absences. The trial court judgment against the teacher was affirmed.

Vittal v. Long Beach Unified School District
87 Cal. Rptr. 319
Court of Appeal of California, Second District,
Division 2, May 26, 1970.
(See page 25.)

Illinois

Cohn v. Board of Education of Waukegan Township High School District No. 119
254 N.E.2d 803
Appellate Court of Illinois, Second District,
January 6, 1970.

A high-school physical education teacher sought a declaratory judgment that he was entitled to a higher classification on the school district salary schedule and damages for salary lost because of improper classification. The trial court entered a judgment for the board and the teacher appealed.

Prior to his employment in the Waukegan district, the teacher had three years of previous experience in two elementary districts. At the time of his employment in Waukegan the salary schedule provided for discretionary credit for related previous experience. The teacher was not allowed full credit for his previous experience, and his subsequent attempts to receive full credit were denied.

Before the trial, the teacher sought to compel the board of education to furnish him with the employment records of 32 teachers and other records that would indicate the rate of pay received by those teachers. The lower court denied the motion. The teacher contended that this ruling was error.

The appellate court noted that the motion of the teacher did not allege why the records might have a direct bearing on the suit, why they were relevant or material, nor did the motion set forth that these teachers had similar backgrounds, had taught physical education, or had received credit for prior teaching experience. Under these circumstances, the court did not feel that the trial court abused its discretion in denying the motion. Other allegations of error made by the teacher were also denied.

The appellate court held that the record did not indicate that the teacher had been treated in an arbitrary or unreasonable manner or that the action of the board was beyond its powers. The judgment of the lower court was therefore affirmed.

Wells v. Board of Education of Community Consolidated School District No. 64
257 N.E.2d 252
Appellate Court of Illinois, First District,
Third Division, February 19, 1970.
(See page 28.)

Kentucky

Board of Education of McCreary County v. Stephens
449 S.W.2d 421
Court of Appeals of Kentucky, January 16, 1970.

The board of education appealed from a lower court decision granting the teacher, a former principal, a judgment for back salary. The plaintiff had been a tenured teacher at the time he was appointed principal. After one year as principal he was reassigned as a teacher because the board felt that he was "not temperamentally suited for the position of principal." Plaintiff testified that at the time of his reassignment, he was assured that there would be no reduction in salary. The school board maintained that there was no discussion of salary at all. Plaintiff began his duties as a teacher August 1966 and on September 27, 1966, he was informed that he would receive $1,004 less than he had received the previous year as principal. He sought to recover the difference between the two salaries, contending that there was no legal basis for the reduction.

The board of education maintained on appeal that the reduction in salary was warranted by state statute which provided that salaries may be reduced if there is an elimination of extra service and responsibilities. However, the teacher argued that the board did not comply with the statute which further provided that with respect to salary reduction "written notification setting forth the reason or reasons for such reduction shall be furnished the teacher not later than May 15."

Because of this provision, the court concluded that the failure of the board of education to notify the teacher by May 15, pursuant to statute, foreclosed its right to reduce his salary for the ensuing school year even though it had reduced his extra duties as principal. The judgment of the lower court was accordingly affirmed.

Louisiana

Gayle v. Porter
239 So.2d 739
Court of Appeal of Louisiana, Fourth Circuit,
July 6, 1970; rehearing denied October 19, 1970.

The Orleans Parish school board appealed from a trial court decision directing the board to correct a teacher's paycheck. The teacher had sued the board for correction of

her paycheck because the school district had deducted two full days' pay at $43.50 per day for days that she was absent beyond the 10 days' sick leave granted each year. A state statute provides for a minimum 10 days' leave a year for each teacher and also provides that additional leave may be granted by the local district at full or partial pay. A second statute prohibits school boards from deducting from a teacher's salary any money in excess of that actually paid a substitute teacher while the teacher was absent. No deduction is permitted during the minimum leave of absence period.

In this instance the teacher had exhausted her leave, had not asked the district for additional leave and had been absent two days after her leave was exhausted. On the first day of absence the school board hired a substitute teacher and paid her $20.00. No substitute was hired on the other day that the teacher was absent.

On appeal, the board argued that the two statutes mentioned above should not be read together since one was general in nature and took preference over the second which the board characterized as a special statute. The court found no conflict between the two laws and concluded that read together they provided for 10 days' sick leave at full pay regardless of whether a substitute was hired and after that deductions could be made from a teacher's salary only in the amount that was actually paid to a substitute teacher. The court held that both were special statutes dealing with the subject of sick leave.

The board also contended that the teacher should have requested additional leave and was precluded from filing suit until she had done so. The court disagreed and noted that the school district personnel handbook provided that a teacher who has exhausted leave *may* apply in writing to the proper school authority for additional leave at full or partial pay. The court pointed out that this was not a mandatory regulation and was merely available to the teacher should she wish to seek the additional leave without penalty or with less penalty than the statute provides. Accordingly, the appellate court approved the decision of the trial court in favor of the teacher.

Maryland

Ehrlich v. Board of Education of Baltimore County
263 A.2d 853
Court of Appeals of Maryland, April 6, 1970.

Following completion of his sabbatical leave, a teacher at a community college failed to return to teaching at that institution. The board of education filed suit to collect the salary that had been paid to the teacher while he was on leave. The lower court granted summary judgment in favor of the board and the teacher appealed.

At the time that the leave was approved, the teacher signed a contract promising to return to the institution for at least one year following the leave. The contract also stated that the teacher would refund the money granted for the leave should he fail to return. While the teacher was on leave, a formal chairman of the social studies department was appointed. This upset the teacher because it was his understanding that he was to be acting chairman on his return. Also, the new chairman had his expertise in the same subject area that the teacher expected to teach upon return.

On appeal, the teacher raised four issues of error in the lower court decision. The first three involved procedure and all were rejected by the appellate court. The fourth contention was that there existed a genuine issue of material facts and, therefore, summary judgment should not have been granted. The teacher maintained that he had an understanding with the president of the college that he would return as acting chairman. The court found that the teacher was entitled only to that position that he held prior to leave, namely, associate professor of social science. The court found nothing in the contract between the parties that indicated otherwise. Concluding that there was no dispute as to the material facts, the court upheld the lower court judgment in favor of the school board.

Minnesota

Morey v. Independent School District No. 492
312 F.Supp. 1257
United States District Court, D. Minnesota, First Division, September 8, 1969.

(See page 73.)

New Jersey

Newark Teachers Association v. The Board of Education of Newark
270 A.2d 14
Supreme Court of New Jersey, October 26, 1970.

The teachers association brought suit for a declaration that the new salary schedule adopted by the board of education was effective immediately and for a mandatory judgment accordingly. The lower court denied relief (259 A.2d 742) and the association appealed. In August 1969, the board had adopted the new salary schedule with the provision that "the effective date of both this policy and salary schedules to be the date of receipt of a proper appropriation or the receipt of funds from such other sources which may be available for the implementation of this policy." At that time the school budget had already been adopted for the school year from July 1, 1969, to June 30, 1970, and the Board of School Estimate refused to implement the new salary schedule by appropriating additional funds.

It was the position of the association that state law made any new salary schedule effective immediately and that the governing body had to appropriate the additional moneys. The appellate court disagreed, holding that both the original wording of the statute in question and the statement annexed to the bill when it was passed provided that any new salary schedule would be mandatorily implemented in a school budget adopted *thereafter.* Thus, it appeared to the appellate court that the theme of the act was that "a new policy or schedule shall not upset a budget already adopted." Although the word *thereafter* was left out when the statute was revised, the court found no reason to assume that a substantive change was intended. Accordingly, the judgment of the trial court in favor of the board of education was affirmed.

New York

Board of Education, Central School District No. 1 v. Rickard
306 N.Y.S.2d 1010
Supreme Court of New York, Otsego County,
January 28, 1970.

(See *Teacher's Day in Court: Review of 1969*, p. 15.)

Two kindergarten teachers who each taught one session of a half-day requested payment as full-time members of the instructional staff. This would amount to double the salary they were receiving as half-day teachers. The board of education sought a declaratory judgment as to its liability to the teachers. The action was dismissed on the ground that the board should have appealed to the Commissioner of Education. On appeal, this decision was reversed, and the case was remanded for a hearing on the merits.

On remand, it was the opinion of the court that nothing in the education law specifically prevented the district from hiring a teacher on a half-day or single-session basis at one-half of the lawfully designated salary.

The state law provided that *teacher* shall mean "all full-time members of the teaching and advisory staff of each school district of the state" and that *salary* shall mean the amount of compensation that is to be paid for "services rendered during the full ten months" the schools are required to be in session. Further, there is provision for prorating the salary of teachers not rendering all the service required of teachers during such period.

The court held that a reasonable construction of these provisions meant that a full-time teacher must work the full school year and a full school day. The court did not feel that the legislature intended that a teacher who worked three hours a day would be considered a full-time teacher. Consequently, the court ruled that the two teachers had no claim against the board for any additional salary.

Central School District No. 1 v. Nyquist
313 N.Y.S.2d 858
Supreme Court of New York, Special Term,
Albany County, August 24, 1970.

The school district brought a proceeding to annul a determination of the commissioner of education relative to salaries for summer-school teachers. The commissioner moved to dismiss the action as did the 11 teachers involved who were permitted to intervene. The school district had paid each teacher $1,000 for services rendered during the 1969 summer program. The teachers appealed to the commissioner who determined that the district should have adopted a summer-school salary schedule in accordance with the state minimum salary law. The school district contended that the commissioner's expansion of the minimum salary law to include summer-school teachers was unwarranted and contrary to legislative intent.

The court noted at the outset that judicial review of decisions of the commissioner is limited to those decisions that are "purely arbitrary." In this instance the commissioner had made his decision in light of the principles set forth in a previous case wherein it was indicated that the state minimum salary schedule was applicable to summer-school teachers. In the opinion of the court the decision of the commissioner was well within the authority vested in him by statute. In view of this and the prevailing judicial authority pertaining to determinations made by the commissioner, his decision in this instance was not purely arbitrary and could not be overturned. Accordingly, the motion to dismiss the complaint of the school district was granted.

Oklahoma

State ex rel. Darnell v. State Board of Education
475 P.2d 181
Supreme Court of Oklahoma, September 29, 1970.

The superintendent of schools of Creek County sought a court order to compel the state board of education to apportion funds and issue the necessary warrants to supplement his salary. State law provided that a county superintendent's salary would be supplemented by state funds equal to the difference between the salary paid from county funds and the minimum salary received by a teacher serving as superintendent of schools with like qualifications and number of teachers under him. The question in this case was not whether the teacher was entitled to the supplement which he was currently receiving but the method of calculating the minimum salary.

The superintendent maintained that the minimum teacher salary was that currently required to be paid, while the state board maintained that the minimum salary was that in effect in 1964-65, not including two subsequent statutory increases. This argument was based on language in the public school foundation act which referred to the 1964-65 school year.

It was the opinion of the court that the minimum salary schedule for the 1964-65 year was used merely as a base upon which the percentage increase for 1965-66 and subsequent years could be calculated. Thus, the court concluded that the superintendent's salary must be supplemented on the basis of the current minimum teacher's salary. The requested order was issued directing the state board to apportion the funds and issue the warrants in accordance with the court's opinion.

Pennsylvania

Legman v. School District of the City of Scranton
263 A.2d 370
Supreme Court of Pennsylvania. March 20, 1970.

(See page 62.)

Virginia

Homezell Chambers v. United States
306 F.Supp. 317
United State District Court, E.D. Virginia,
Alexandria Division, November 21, 1969.
Certiorari denied, 91 S.Ct. 1619, May 3, 1971.

(See *Crawford v. United States, Teacher's Day in Court: Review of 1967*, p. 13.)

Suit was brought on behalf of those teachers in the overseas school system whose rights to recover back pay

were not adjudged in the 1968 case of *Crawford v. United States* (376 F.2d 266) wherein other teachers were denied back pay.

The teachers in the present action alleged that their basic compensation as fixed by Oversears Teachers Pay and Personnel Practices Act should be equal to that received by teachers in United States school systems of over 100,000 population; that they were being paid less; and that they were entitled to the difference. The United States Government maintained that the law in question did not require such a result and that the precise salary paid to the teachers was in the discretion of the Department of Defense. Both parties filed motions for summary judgment.

The law in question allowed the Secretary of each military department to fix the rate of basic compensation of teachers in his department in relation to the rates of basic compensation for similar positions in the United States but no rate was to be higher than for similar positions in the District of Columbia. The Overseas Dependents' School System is provided for on a yearly basis by appropriations from Congress limited to x-dollars per pupil. This per-pupil limitation may not be exceeded.

In granting the motion of the Government for summary judgment, the court held, in accord with *Crawford*, that Congress fixed the total amount that could be spent for the yearly operation of the overseas school system, and within the per-pupil limitation in the appropriations, the allocation for the amount to be paid to teachers and for other necessary expenses was left to the sound discretion of the Secretary of Defense.

NOTE: The Supreme Court of the United States declined to review the decision.

Washington

Lande v. South Kitsap School District No. 402
469 P.2d 982
Court of Appeals of Washington, Division 2, April 22, 1970.

(See page 21.)

CONTRACTS

Arkansas

Farris v. Stone County School District No. 1
450 S.W.2d 279
Supreme Court of Arkansas, February 9, 1970.
Rehearing denied March 16, 1970.

A discharged teacher sued to recover the balance of her salary due under her contract. Following a judgment for the school board, the teacher appealed on grounds that the trial court erred in not granting her motion for an instructed verdict against the school board.

The school district operated three schools and had five school directors. Two directors lived in one of the school areas, two in another, and the fifth in the third area. It was general practice for the directors of the area, with the concurrence of the particular principal, to recommend to the board which teacher to hire. Discharge of a teacher was accomplished in a similar manner. The teacher in this case was discharged on March 29 by an oral notice from the principal after a conference he had that day with the board members living in that area. The two board members made the discharge decision based on the principal's recommendation. The full board never considered the matter until May 31, after the teacher had requested the balance of her salary.

The teacher alleged that the action of two board members in ordering her discharge was invalid. The court agreed, saying that it is settled that contracts with teachers may not be binding on a district unless they are executed at a duly convened meeting of the board. The court held that the same rule must apply to the cancellation of a teacher's contract. The fact that the full board considered whether the teacher should be paid after school had been dismissed for the summer was not a ratification of the discharge. Since the record clearly showed that the board never took any action with respect to the discharge, the decision of the trial court was reversed, and the case was remanded with directions that an instructed verdict for the payment of the balance of salary under the contract be entered for the teacher.

Florida

Ross v. McCrimmon
233 So.2d 411
District Court of Appeal of Florida, Third District,
March 31, 1970.

Discharged junior college teachers sued to require the school trustees to issue them continuing contracts. The trial court denied relief and the teachers appealed. Contracts had been issued to the teachers. However, the teachers contended that certain portions were illegal and returned the contracts unsigned. When they were notified of their discharge, they sought to require the trustees to issue amended contracts in accord with a memorandum they had submitted rather than the tendered ones prepared by the commissioner of education.

In affirming the trial court holding, the appellate court stated that the trustees were not empowered to issue the contracts sought by the teachers, and did not have a clear legal duty to do so. The writ the teachers requested was denied.

Illinois

McLaughlin v. Tilendis
253 N.E.2d 85
Appellate Court of Illinois, First District,
Fourth Division, September 24, 1969; rehearing
denied October 24, 1969.

(See page 73.)

Indiana

Tippecanoe Valley School Corporation v. Leachman
261 N.E.2d 880
Appellate Court of Indiana, Division No. 2,
September 8, 1970.

The school district appealed from a lower court judgment granting a former teacher of the district damages for breach of contract. The teacher had been employed by written contract for the 1963-64 school year. By a printed clause in the contract the teacher agreed "to use such text materials as are prescribed by said employer, and to observe all reasonable rules and regulations of the properly constituted school authorities." The contract also provided that the teacher could be dismissed during the contract term for incompetency, immorality, insubordination, or other just cause after being found guilty of the offense at a hearing at which the teacher had counsel. The teacher was licensed to teach English and social studies, but prior to commencing employment, he requested that he teach social studies and literature only, citing a meager background in grammar. He also requested senior high-school rather than junior high-school assignments. The teacher was assigned two classes of United States history and two of United States government, all on the high-school level. On November 11, 1963, the principal telephoned him and reassigned him to ninth- and tenth-grade English.

Prior to reassignment, the teacher had distributed to his history and government students a book list from which

they were required to choose one book to read. It was not until after reassignment that the teacher was told that books had to be approved by the principal. On November 15 the teacher wrote to the superintendent of schools, stating that he felt he must "consider seriously" resigning because he felt he was not qualified to teach English. On November 22 the teacher received a memo from the superintendent stating that the school board "has voted unanimously to cancel your present contract." The teacher did not teach or report to work again. On December 9, 1963, the teacher received notice that his contract cancellation had been rescinded, but one or two days later he was notified of a hearing to be held to consider terminating his contract for incompetency and insubordination. Shortly thereafter and prior to the scheduled hearing, the superintendent wrote to the teacher's draft board, stating as of December 18 (the date of the hearing) the school board would have no more responsibility to the teacher and that he would no longer be employed. About the same time the teacher's counsel wrote to the superintendent seeking a statement of charges, preparation time prior to the hearing, the right to present and cross-examine witnesses, the right to employ a court reporter, and a public hearing. No answer was received to this request, but the teacher did have a court reporter present at the hearing. Counsel was not given time to prepare a defense after the charges were known, nor was he permitted to call witnesses of his own or to cross-examine witnesses for the board. At the conclusion of the hearing the teacher's contract was terminated.

The trial court awarded the teacher the wages that he would have received had he taught the full year plus interest. On appeal the school board contended that this judgment was incorrect because the teacher had not proved that he had complied with all of the provisions of the contract. The court said that if this argument was intended to mean that the teacher not only had to prove that he was ready, willing, and able to teach but also to prove his ability and submissiveness during the time he was permitted to teach, it must fail. Such a rule, the court said, would nullify the hearing procedures in the contract.

The next argument of the school board was that its cancellation of the teacher's contract was conclusive and that the present suit was a forbidden collateral attack. The board maintained that the teacher could seek judicial review of its administrative determination only through a direct attack and not by the present suit. The appellate court held, however, that the evidence was sufficient to sustain the implied finding of the trial court that the procedure for removal of the teacher provided for in the contract was not followed and that this failure was a gross abuse of discretion on the part of the board in that its action denied the teacher's right to an opportunity for a hearing with benefit of counsel. The appellate court ruled that it did not matter whether the suit was characterized as a direct attack or as a collateral attack, for there was sufficient evidence to sustain either or both.

The appellate court found no abuse of discretion on the part of the trial court and held that the case was fully and fairly tried in the court below. The verdict granting the teacher damages for breach of contract was affirmed.

Kansas

Robertson v. McCune
472 P.2d 215
Supreme Court of Kansas, July 17, 1970.

A teacher brought an action against the school board for breach of contract. The trial court granted the motion of the board to dismiss the complaint and the teacher appealed.

The teacher alleged that he had a contract for the 1968-69 school year and a letter of transmittal from the superintendent advising him of his possible assignments. The teacher stated that he was orally advised that he would not have to teach any courses other than those listed in the transmittal letter, all of which were industrial arts courses. The teacher further alleged that after school started he was advised that he would be required to teach an eighth-grade English class. The teacher refused, and on December 6, 1968, he was discharged from his position because his refusal to teach the assigned class, according to the school board constituted a breach of contract on his part.

The written contract between the teacher and the board contained blank lines on which the courses were to be filled in later. The teacher alleged that these blanks constituted a patent ambiguity in the contract that required explanation by oral evidence. The contract also contained a clause that stated that "the board reserves the right to assign said teacher to such building and work as the best interest of the schools of the district require."

At the trial the teacher sought to introduce evidence of his oral understanding with the superintendent that he would not have to teach other than industrial arts courses. The teacher argued that this oral evidence should be admissible to supply the missing blanks in the contract.

The appellate court held that while oral evidence is admissible to explain an ambiguous feature of a contract, this rule was inapplicable to the contract in this case. In view of the clause in the contract permitting the school district to assign a teacher "to such building and work" as the best interest of the school district indicated, the court found no ambiguity in the contract. Since the contract was plain on its face and no evidence was offered to show that the school board agreed not to exercise its right under the clause, the court held that the teacher, not the school board, had breached the contract and his dismissal was proper. The decision of the lower court granting the motion of the school district to dismiss the case was affirmed.

Kentucky

Bell v. Board of Education of McCreary County
450 S.W.2d 229
Court of Appeals of Kentucky, February 6, 1970.

The superintendent of schools of McCreary County was removed from office by the board of education during his contract term. Prior thereto he was notified of the charges and filed a response denying them and demanding a hearing. He also requested that the members of the board disqualify themselves on grounds of prejudice. The hearing was held, but none of the members disqualified himself,

and the removal of the superintendent was by unanimous vote. The superintendent then filed suit alleging that the removal was arbitrary. The trial court denied relief. On appeal, the superintendent alleged that the order of the board should be set aside on three grounds: the members refused to submit to examination to determine any prejudice, the charges against him were not sufficiently specific, and the evidence was insufficient to support the charges.

Kentucky law provides that a superintendent may be removed for cause by a vote of four members of the board. The court said that while the specific charges must be definite enough to give the accused an opportunity to defend himself, the law does not provide for a board hearing. The court said that since the board was not required to hold the hearing, the superintendent could lose nothing by it since he would still have an opportunity to present his case to the court.

As to the first contention of the superintendent, that the order of the board should be vacated because the members refused to submit to the prehearing examination, the court said that while the board members should submit to an examination for possible prejudice in the case of a teacher when a hearing is required, the absence of order and fairness in its conduct cannot be prejudicial since no hearing is necessary in the case of a superintendent.

The second allegation of the superintendent was that the charges were not sufficiently specific to provide him with a reasonable opportunity to defend himself. Here again the court noted that the superintendent could have a hearing before the court regardless of the action of the school board. Therefore, the court felt that when the board conducted the hearing, the production of evidence in support of the charges served the purpose of making specific what might have been too general from the charges alone. The court then reviewed the board's charges that it felt had been substantiated by the evidence. The court found that the charges relating to political activity by the superintendent were supported by the evidence, although this charge alone was insufficient cause for dismissal. Other charges, including the use of federal money to support particular candidates for public office and the failure to comply with fire safety inspection requirements, had been proved. The court held that on the whole there were enough specific charges supported by substantial evidence to conclude that the action of the board in removing the superintendent was not arbitrary. The judgment of the lower court was affirmed.

Michigan

Etue v. Bedford Public Schools, Monroe County
179 N.W.2d 686
Court of Appeals of Michigan, Division 2,
May 27, 1970.

The school district appealed from a trial court judgment in favor of a teacher for breach of contract. The teacher had a contract with the school district for a full school year. Her authorization to teach was a 90-day substitute teacher permit obtained for her by the school district. At the end of the first semester the teacher's services were terminated because a properly certified teacher became available for her position. The school district conceded that the teacher's services were satisfactory, but defended its action by arguing that the superintendent could not apply for a continuation of the teacher's permit because the application included an oath-supported statement that no properly certified teacher was then available. The contract between the teacher and the school board contained a clause to the effect that the contract would terminate if the teacher's certificate expired.

The appellate court said that this last clause was of no effect since the teacher never had a certificate and, therefore, the clause had no bearing on her rights. Further, the school board was well aware of the fact that the teacher had only a temporary permit and that the penalty for employment of an unqualified teacher when a qualified one was available was loss of state aid. However, the district had placed itself in this position by issuing the teacher a one-year contract.

In affirming the decision of the trial court, the appellate court held that where a school board contracts with a teacher who has only a temporary permit for a period shorter than the contract period, the board cannot later complain that the permit expired and was not renewed, and, therefore, it was relieved of its contractual obligation to the teacher who, in all other respects, was blameless.

Minnesota

State ex rel. Anderson v. Bellows
179 N.W.2d 307
Supreme Court of Minnesota, June 19, 1970;
rehearing denied September 23, 1970

A college teacher sought an order directing officials of Southwest Minnesota State College to reinstate him as chairman of the Division of Humanities and to afford him a hearing upon due notice with respect to his dismissal from that position. The trial court granted the relief requested by the teacher and the college appealed.

In the fall of 1967, the teacher was appointed chairman of the department and served in that capacity for two academic years. His letter of appointment from the college dean referred to a four-year term in that position, but included the notation that all appointments are submitted to the state college board for final consideration. The teacher conceded that the state board never ratified any employment contract beyond one year. In August 1969, the teacher was replaced as chairman of the department and reassigned to the position of associate professor following an extended exchange of correspondence between him and the college officials. The teacher refused to accept the reassignment, but notified the president that he would meet and teach the classes until the court determined the matter of the chairmanship. During the 1969-70 school year the teacher was notified that his employment would not be continued for the 1970-71 school year. The teacher claimed that he was entitled to reinstatment as department chairman because of the initial four-year contract of employment.

The appellate court found clear statutory authority to the effect that the exclusive authority for the management

and control of each of the state colleges was in the state college board. Further, it found no regulation of that board that delegated to anyone the authority to enter into employment contracts with personnel. While under the existing regulation the college president may recommend appointments, they must be approved by the state college board before a contract could be created.

The appellate court said that the teacher must be charged with the knowledge that the state board had exclusive authority to execute employment contracts. Since in this case the board had never approved a contract for the teacher beyond one year and the teacher had failed to prove the existence of a four-year contract, the court concluded that he was not entitled to a writ of mandamus ordering his reinstatement as department chairman. In so deciding, the court declined to direct that the teacher be given a hearing as to the reasons why he was not permitted to continue the chairmanship during an academic year which has already passed, for this would serve no useful purpose. The appellate court also held that the teacher had been properly informed that his contract would not be renewed for the 1970-71 school year. The writ issued by the lower court was vacated and the decision was reversed.

Mississippi

Stegall v. Jones
241 So.2d 349
Supreme Court of Mississippi, November 9, 1970;
rehearing denied December 14, 1970.

A principal of an attendance center appealed from the lower court decision upholding his dismissal. In his notice of dismissal he was advised of his right to a public hearing. The hearing was held before the school superintendent of Rankin County, at which the principal was represented by counsel and a complete transcript was made. At the conclusion of the hearing the county school superintendent found the principal guilty of the six charges against him and removed him from office. The principal then appealed to the state board of education which affirmed the decision of the superintendent as did the lower court.

Under the policies of the Rankin County board of education a principal of an attendance center is responsible for, among other things, the proper spending and accounting of the funds in his budget. The policies also provided that all supplies must be purchased on competitive bid and that a principal may not be reimbursed for mileage on his car used in the regular performance of his duties.

The first charge against the principal was that he used school gasoline in his private automobile. The principal admitted this use for school-related duties, but said that when he was informed this was improper, he stopped. The second charge was that he purchased a mowing machine without taking competitive bids. The principal also admitted this, but stated that the machine was purchased from a manufacturer on the state-approved list at the state-approved price. Charge number three was that he had charged to the school district personal long-distance calls from both his home and his office phones. The principal contended that he thought these were covered by the language in his contract that said "plus teacher's home with utilities furnished." The final charge mentioned by the court was that the principal had made purchases under Title II, ESEA, that were turned down by the coordinator and had to made up by the school district in excess of its budget.

The appellate court noted that it was confronted with "at least four serious mistakes of judgment and discretion on the part of the [principal]." It appeared to the court that at times the principal acted with studied indifference to the written policies of the county board of education. The appellate court could not say that the board was not justified in gradually losing trust and confidence in the correctness of his decisions. Finding substantial evidence to support at least four of the six charges against the principal, the appellate court affirmed the judgment of the trial court upholding his dismissal.

Oregon

Owens v. School District No. 8R of Umatilla County
473 P.2d 678
Court of Appeals of Oregon, Department 2,
August 13, 1970.

A teacher sought a judgment declaring that he had a valid teaching contract pursuant to rules adopted by the board of education and included in his contract. The board claimed that the adopted rules contravened state law and were invalid. The trial court granted the motion of the school district to dismiss the suit and the teacher appealed.

The district was a nontenure one and as such was required by state law only to give notice to a teacher by March 15 of intention to renew or not renew his contract. However, the district had a negotiated agreement with the local teachers association that provided for conferences with a teacher whose performance was unsatisfactory and if the problem persisted, the administrator could recommend a one-year probationary contract at the conclusion of the present employment contract. If the performance of the teacher did not improve, dismissal could be recommended, but the teacher must be given written notice with reasons and a hearing on request. The teacher in this case had a three-year contract with the board and was notified prior to March 15, 1969, that his three-year contract would not be renewed. The district did not comply with the procedures for dismissal set out in the agreement.

The teacher contended that the board must comply with the procedures in the agreement, and since it did not, he had another valid three-year contract with the board. The school district claimed it complied with statutory provisions for contract renewal. Therefore, the issue before the court was whether the school district had the authority to promulgate binding rules and regulations concerning nonrenewal which are different from provisions set out in the statute. For if the statute set out minimum standards, the district might properly bind itself to follow higher standards and could be found liable for failure to comply with those rules and regulations.

In addition to the state statutes governing nonrenewal of contracts in nontenure districts, school districts are given broad grants of authority in various areas, including the

hiring of teachers and the fixing of compensation and the terms and conditions of employment. However, since the statutes were silent on removal of personnel, the court found that the statutes placed no restrictions on the district board concerning such removal. Moreover, the giving of notice of renewal or nonrenewal of contract as provided by statute is not a grant of power to the board but a duty on its part to its teachers who have the express statutory right to be so informed by March 15, which the board could not transgress. The court also found that each school district had the statutory power to establish rules for the government of the schools so long as they were consistent with the rules of the state board of education.

Since in this case the rules and regulations contained in the agreement were not inconsistent with any rules of the state board, were not a transgression of the statutory right of teachers for notice of contract renewal or nonrenewal, nor inconsistent with the statutes mentioned, the court concluded that the procedures contained in the negotiated agreement and their inclusion in the teacher's contract were permissible. Therefore, the lower court should not have granted the motion of the school district to dismiss the case. The decision was reversed, and the case was remanded to the lower court for further proceedings consistent with the opinion of the appellate court.

Pennsylvania

Mullen v. Board of School Directors of DuBois Area School District
259 A.2d 877
Supreme Court of Pennsylvania, December 4, 1969.

(See page 43.)

Washington

Daly v. Shelton School District 309
475 P.2d 897
Court of Appeals of Washington, Division 2,
October 5, 1970.

A school psychologist appealed from a trial court judgment dismissing his complaint against the school district for breach of contract. The teacher had an employment contract to begin in September 1965. On the first day of school he was issued supplies and installed in his new office. A few days later he had an encounter with the school district personnel director. He then went to see the superintendent who told him that his contract was in jeopardy and that his application for provisional certification was being held up by the superintendent so that the school board would not be given an opportunity to immediately discharge him. A few days later the psychologist was ordered to turn in his supplies and keys, and at his own request was given a document stating that he was authorized to negotiate with another district for a new position and that "he has not been authorized to function professionally within our District."

In October the superintendent suggested to the employee that he return to the Shelton school district, but before he could do so, a new school board was elected and the superintendent was replaced. Finally in December 1965, the school board wrote a letter to the employee, notifying him that he had voluntarily quit his employment.

The appellate court held that on the record before the trial court it was not clear whether the employee had been discharged, his contract had been breached, or the contract had been voluntarily abandoned. Under these circumstances, the appellate court held that it was error for the trial court to dismiss the complaint. The higher court was of the opinion that it was up to the jury to resolve the questions of fact and determine what did happen. For these reasons the case was remanded to the trial court with direction for retrial and jury consideration of whether or not the employee abandoned the contract or whether his failure to work in the district was excused by the actions of the superintendent or inaction of the school board.

Lande v. South Kitsap School District No. 402
469 P.2d 982
Court of Appeals of Washington, Division 2,
April 22, 1970.

A high-school English and drama teacher brought an action against the school district, seeking a judgment that she was entitled to the same contract for the 1967-68 school year as she had previously been given. From her initial employment in 1962 through the 1966-67 school year, the teacher had received her base salary plus $550 for a special assignment in dramatics. For the 1967-68 school year the district proposed to pay her only $100 extra salary for moderating a dramatic club. She refused to sign the tendered contract, consulted an attorney, and instituted a grievance procedure. Conferences between the teacher and district officials were held before the end of school and during the summer. At the conclusion of the last meeting in August 1967, the teacher reluctantly signed the contract originally tendered to her. This contract was formally approved by the county superintendent early in October 1967.

Shortly after school began in September 1967, the teacher filed suit. The trial court ruled that the tenure law guaranteed the teacher a contract at the same salary she had received the year before, and that the contract tendered by the school district constituted a notice that they wished to renegotiate the teacher's contract. The trial court concluded that the negotiations of the teacher and her signing the contract constituted a waiver of her statutory reemployment rights. The trial court dismissed the case and refused to allow the teacher attorney fees.

The issues on appeal were whether or not the teacher had waived her rights under the tenure law, and if she had done so, did the court suit filed prior to the time that the contract was approved by the superintendent constitute a repudiation of the waiver.

The appelate court held that the teacher did waive her rights under the tenure law when she entered into negotiations with the school board concerning the change of duties. There was also substantial evidence to support the trial court's finding that the teacher was aware of her rights under the tenure law and that she knowingly and willingly waived them by signing the contract after the meeting with the board of education.

The court noted that the tenure law in any event would not have given the teacher a vested right to coach dramatics, an extracurricular subject, but it would have entitled her to the extra compensation in her previous contract, had she pursued the regular grievance procedures.

The court also held that the teacher had not filed suit before the contract was approved. The contract offered the teacher contained a stamp of the signature of the board of directors attested to by the clerk of the board and became binding when the teacher signed it. The court said that the signature of the superintendent was not required to make the contract valid, but was required solely to verify that the contract conformed to state law and that the teacher had the proper credentials to teach.

The trial court decision was affirmed.

TENURE

Tenure Teachers

THE CASES comprising this section fall into two catagories, those in which the teacher has tenure, and those in which the presence or absence of tenure is at issue.

Alabama

Autry v. Board of Education of Randolph County
235 So. 2d 651
Supreme Court of Alabama, May 15, 1970.

A teacher on continuing contract status was notified by the board of education that his contract was being cancelled. The notice specified the grounds for cancellation, including being in school under the influence of intoxicants, and mentioned six dates when the teacher was counseled by the principal and/or the superintendent prior to notice of cancellation. Following the receipt of the notice, the teacher notified the board that he wished a hearing on the matter, and one was held at which the teacher was represented by counsel. The board entered its decision that the contract was cancelled. The teacher appealed to the State Tenure Commission, which upheld the local board determination. In a further appeal to the circuit court the local board decision was upheld. The present appeal followed.

The trial court noted in its decision that its right of review was limited to whether the action taken by the employing board was in accordance with the teacher tenure law and, secondly, whether the action was arbitrarily unjust. The appellate court agreed with the lower court, holding that the teacher had received a detailed statement of the reasons for the cancellation of his contract and that the procedures outlined in the tenure law were followed. Furthermore, the appellate court also concluded that the evidence taken at the board hearing supported the determination of the local board. Therefore, the trial court decision upholding the contract cancellation was affirmed.

Cullman City Board of Education v. Buchanon
231 So.2d 134
Court of Civil Appeals of Alabama,
December 15, 1969. Rehearing denied January 5, 1970.

A teacher sought a court review of the action of the State Tenure Commission which upheld the local schoolboard decision transferring her to another school and grade. The teacher had received a hearing before the local board prior to appealing to the State Commission. This agency rendered its opinion on August 1, 1967. On January 6, 1969, the teacher sought judicial review of that decision. The trial court set aside the transfer and the school board appealed.

The teacher's petition had not named the persons who were to respond. However, the trial court had ordered that copies of the petition and the order setting the date of hearing be served on each defendant. Copies of these papers were served on the local superintendent and the superintendent of the state department of education. Since the state superintendent is not a member of the State Tenure Commission, that body was never served and it made no appearance at the trial.

The appellate court ruled that the action should have been brought against the State Tenure Commission and not the local board, and for that reason held that the lower court decision should be reversed as to the local board.

The appellate court also concluded that the lower court should not have taken jurisdiction of the matter because of the teacher's delay in bringing the action. The case was reversed and remanded.

The supreme court of the state in a *per curiam* opinion (231 So.2d 137, February 5, 1970) denied a writ for a review of the decision, but stated that this denial was not to be considered as an approval of that part of the lower appellate court decision pertaining to the delay in bringing suit.

Foster v. Board of Education of Bullock County, Alabama
431 F.2d 648
United States Court of Appeals, Fifth Circuit,
September 15, 1970.

(See page 49.)

Arizona

Palicka v. Ruth Fisher School District No. 90 of Maricopa County
473 P.2d 807
Court of Appeals of Arizona, Division 1,
Department A, August 31, 1970

A nontenure teacher appealed from the lower court decision upholding the action of the school board in terminating her contract. The teacher was first employed for the

1966-67 school year, and her contract was renewed for the 1967-68 school year. Toward the end of that year, she was orally informed by the head teacher that her contract would not be renewed for the next year. Inefficiency, lack of discipline in the classroom, failure to control her emotions in disciplining children, and failure to possess proper qualifications were given as reasons for not renewing the contract. However, the head teacher failed to give the teacher written notice by March 15 as required by statute with the result that her contract was automatically renewed for the 1968-69 school year.

After realizing its error, the board of education tendered the teacher a contract, but eight days after school started in September 1968, the board gave the teacher written notice that she was suspended and that her dismissal was being recommended for the reasons enumerated previously. The teacher was present with counsel at a hearing before the board. At the conclusion of the hearing, the board orally advised the teacher that her suspension was made permanent and that her contract would be terminated. Seven days later the teacher received written notice of dismissal. In her suit the teacher alleged wrongful breach of her contract and unlawful termination under the Arizona tenure law.

The teacher argued that the tenure law required written notice to the teacher within three days of the hearing, and since she did not receive notice until seven days after the hearing, the termination was void. The court disagreed with this argument, noting that the statute required the board to reach a decision within three days and then notify the teacher but the time for notification was not set out in the statute. The court ruled that notice to the teacher within seven days after the hearing was reasonable under the circumstances and complied with the statute.

The teacher then contended that the board waived the alleged deficiencies in her teaching because it allowed her contract to be automatically renewed for the 1968-69 school year, with knowledge of the alleged deficiencies. In rejecting this contention, the court said that the teacher tenure law was not intended to prevent school boards and administrators who rehire probationary teachers with known deficiencies in the hope that they can assist the teacher to improve performance from later dismissing the teacher for cause should their efforts fail. Therefore, the court ruled, the board was not estopped from asserting the same deficiencies in the teacher's performance as it had earlier asserted.

The final question before the court was whether the burden was on the school board to show good cause for the dismissal of the teacher or on the teacher to show that she was dismissed without good cause. The trial court had assumed that the burden of proof was on the teacher. The appellate court said that since a probationary teacher cannot be dismissed during a contract period without good cause, once the teacher had shown that a contract existed and that she was discharged, the burden shifted to the school board to establish good cause for the dismissal. Since the trial court made no determination as to whether the school board met this burden, the case was remanded to that court for a new trial.

California

Gilbaugh v. Bautzer
83 Cal.Rptr. 806
Court of Appeal of California, First District, Division 3,
January 22, 1970.

A tenure employee of San Jose State College brought an action against the college officials, challenging his reassignment in 1966 from an administrative to an academic position with a corresponding reduction in salary. He had been an associate professor prior to being appointed to an administrative position of dean and academic vice-president of the college. After seven years in that position he was reappointed to the position of professor of education. He requested a hearing on the sole question of whether the new position was commensurate with his qualifications. A review board appointed by the trustees of the state college system affirmed the assignment. The trustees then heard the professor and adopted the decision of the review board. Suit was then brought. The trial court denied relief and this appeal followed.

A section of the state education code allowed an administrative employee to be transferred to an academic position commensurate with his qualifications at the salary for that position. The college officials relied upon this section for their action. The professor maintained that this section of the code ceased to have any effect as of 1962. The court reviewed the legislation and found that although some portions of the higher education act were intended to be temporary only, this was not one of those sections and it "continues to the present time to provide specifically for the reassignment of administrative personnel."

The professor also argued that the position to which he had been assigned was not "commensurate with his qualifications," and thus his transfer was not authorized by the statute. He contended that he was fully qualified as an administrator and thus any position that required teaching only was not commensurate. The court did not agree with the argument, saying that it was contrary to the intended effect of the statutory provision. Further, reduction in salary alone does not show that the new position was not commensurate with the profession's qualifications, for he has no vested right in a particular salary. The court concluded that "the academic position to which [the professor] was reassigned is fully commensurate with his teaching qualifications." The decision of the lower court was affirmed.

Palo Verde Unified School District of Riverside County v. Hensey
88 Cal.Rptr. 570
Court of Appeal of California, Fourth District, Division 2,
July 24, 1970.

A tenure junior-college teacher brought an action challenging the right of the school district to dismiss him. The trial court entered a judgment permitting the dismissal and the teacher appealed. The charges brought against the teacher were immoral conduct and evident unfitness for service.

The appellate court considered the evidence relating to the teacher's actions on which charges were based. These included tearing out from his classroom a defective loud speaker which was an integral part of the fire alarm and bell system, making vulgar comments to the class, and making vulgar references to the superintendent.

The court held that although some of the comments of the teacher were merely vulgar and in bad taste and not necessarily immoral, taken altogether the incidents served as a substantial basis for the trial court's determination that the charges of immoral conduct and evident unfitness for service were true and constituted sufficient cause for dismissal.

Vittal v. Long Beach Unified School District
87 Cal.Reptr. 319
Court of Appeal of California, Second District,
Division 2,
May 26, 1970.

A junior-college teacher of English as a second language sued the school district, seeking a judgment that she was entitled to be classified as a permanent employee and about $19,000 in back salary from the 1959-60 school year. The trial court directed the school district to classify the teacher as a permanent employee as of September 1959, but denied any award for the claimed deficiencies in salary. The teacher appealed, contending that she was entitled to permanent status on a full-time basis with back pay from the 1959-60 school year, and the school district appealed, contending that she was entitled to neither, or at the most, permanent part-time status.

The teacher had been employed by the district since the 1956-57 school year, and at all times was paid on an hourly basis. During the 1959-60 school year and every year thereafter, the teacher made demands on the junior college officials that she be classified as permanent. Every year she was informed that her request was denied. She eventually consulted the local teacher association, and one of its officials got in touch with the school district about her request. At the beginning of the 1967-68 school year, the teacher was informed that her teaching load was reduced from the expected 21 hours per week to 12 hours per week. This action, the teacher alleged, was arbitrary and intended to punish her for asserting her claim to permanent status. The trial court agreed with this contention and directed the school district to compensate the teacher at the rate she would have received had she taught the 21 hours per week. The trial court also found that with the exception of the 1967-68 school year, the teacher "carried and performed a teacher load equivalent to or greater than other permanent employee teachers instructing the same course."

The main issue in the case, according to the appellate court, was whether or not the teacher was entitled to permanent status. The California Education law provides that a certificated school employee who completes three consecutive school years and is re-employed for a fourth year becomes a permanent employee. A complete school year of service is defined as service for at least 75 percent of the number of school days. The school district asserted that at no time had the teacher served 75 percent of the number of school days for three consecutive years. The teacher urged a more liberal construction of the statute, arguing that the law does not require a teacher to hold classes or teach 75 percent of the time, only that she serve 75 percent of the time. She contended that she met this requirement during all years except 1967-68 in that she carried a full teaching load and worked as many hours as teachers classified as permanent in the same course.

The court did not feel that the legislature intended as strict a construction of the statute as that advocated by the school district. The court said that where a statute must be construed by the courts, it should be interpreted so as to produce a result that is reasonable. In this case a reasonable interpretation would be that where a teacher has taught more than 75 percent of the hours of a full-time teacher but has not taught 75 percent of the days of the school year, the teacher is entitled to permanent status. The court held under the facts of this case that the teacher had served more than 75 percent of the school days for three consecutive years and therefore was entitled to be classified as permanent.

The next issue was whether or not the judgment granting permanent status should be retroactive to September 1959. The appellate court said that although the teacher's right to permanent status accrued as of that date, suit to establish that right had to be brought within three years' time. However, every September the teacher's right to permanent status automatically became renewed. But since suit was not brought until December 1967, permanent status could be retroactive only to September 1965. For similar reasons, the court held that the teacher was not entitled to back pay for the years prior to 1967-68. Although the teacher asserted permanent status every year, she always contracted to teach at an hourly salary.

The appellate court found sufficient evidence to support the findings of the trial court that the drastic reduction in the teacher's load for 1967-68, "was without justification, capricious and knowingly calculated to prejudice [the teacher's] position as a permanent employee." Nor did the trial court err in ordering that the teacher be paid for 1967-68 and 1968-69 on the basis of the hourly rate provided in her contract for 21 hours. The one question that was left unanswered by the trial court was whether the teacher was entitled to full-time permanent status or part-time status. The court held that since substantial rights depend upon her status, this question should have been determined. In view of the finding that the teacher had a full-time load for all years except 1967-68, she was entitled to have the trial court judgment modified to declare that she was entitled to full-time permanent status. The trial court ruling, with this modification, was affirmed.

Colorado

Robb v. School District No. RE 50(J)
475 P.2d 39
Colorado Court of Appeals, Division II
August 18, 1970; rehearing denied September 15, 1970.

A teacher-principal appealed from a trial court decision which directed a verdict in favor of the school district. The

teacher alleged that he had a valid contract for the 1966-67 school year which the school district had breached. The district denied this, and charged that the teacher refused to accept reassignment and therefore breached the contract.

The teacher had been employed by the school district since 1952-53 under a series of written contracts. For the 1965-66 school year he received a salary of $7,720, including a $1,000 supplement for duties as a principal. During that school year the board amended its retirement policies to provide for mandatory retirement at age 65. The teacher was then 65 years old. The board decided to retire him at the end of the 1965-66 school year, but never gave him written notification of this although it was alleged by the board but denied by the teacher that he was given oral notice. In June 1966, the teacher informed school officials that he had not retired and that he considered that he had a valid contract for the 1966-67 school year. The board then offered the teacher a contract that did not include the salary supplement for the principal's duties. The teacher refused this offer and indicated his readiness to perform services at the higher salary. The board would not agree, and the teacher never performed any duties for the board for the 1966-67 school year.

In granting the directed verdict in favor of the school board, the trial court found that the teacher was not a tenured teacher under state law, that the teacher was automatically re-employed for the 1966-67 school year by the failure of the school board to notify him to the contrary by April 15 of the preceding school year, and that the board deemed the teacher's work as a principal unsatisfactory and reassigned him as a classroom teacher for the 1966-67 school year. The trial court then held that the failure of the teacher to accept this reassignment was improper and he was not entitled to any relief.

On appeal the higher court found as the trial court did that the teacher was automatically re-employed at the same salary for the 1966-67 school year. However, contrary to the finding of the trial court, the appellate court found that the teacher did have tenure. The school district did not elect to come under the state tenure law until the 1963-64 school year and none of its employees at that time were eligible for tenure until the 1966-67 school year. Since the teacher in this case was not informed in writing that he would not be re-employed for the 1966-67 year, he was automatically re-employed and achieved tenure by operation of the statute, which granted tenure after a three-year probationary period and re-employment for the fourth year.

The appellate court ruled further that since the teacher had the protection of the tenure law, he could not be relieved of his duties as principal and be transferred to a teaching position until the statutory requirements had been complied with. The tenure statute permits transfers when the teacher-administrator is "deemed" unsatisfactory in his administrative capacity. Another statute requires that all voting at any board meeting must be by roll call. The state supreme court has interpreted this to mean that the school board could act only at a public meeting and only by roll-call vote. Since no roll-call vote was taken, the appellate court held that the action of the board deeming the teacher unsatisfactory as an administrator was a nullity and of no consequence.

Concluding that the contract of the teacher-principal was operational and enforceable until the proper procedure was taken by the board to "deem" him unsatisfactory and transfer him, the appellate court reversed the trial court judgment in favor of the school board. Since the teacher was ready to perform his valid and enforceable contract, but was prevented by the school board from doing so when it refused to honor the contract and hired a replacement, the trial court was directed to enter a judgment for the teacher for the difference between the salary he would have received as teacher-principal and what he did receive during the 1966-67 year.

Florida

Powell v. Board of Public Instruction of Levy County
229 So.2d 308
District Court of Appeal of Florida, First District,
December 18, 1969; rehearing denied January 14, 1970.

A teacher sought a court review of the board of public instruction action that terminated his contract during the school year. He had been notified by the superintendent that he was being suspended on grounds of immorality and that he was entitled to a public hearing on the charges. The teacher requested a hearing, but asked for and received a continuance of that hearing one month beyond its original date. On the day of the hearing, the teacher was served with another notice specifying the charges against him. At the hearing the charges were sustained and the teacher's contract was terminated. The school board rendered no final order containing findings of fact based on the evidence nor specifying which of the charges had been sustained.

In his suit, the teacher contended that he was denied due process of law in that the charges placed against him by the superintendent were so vague, indefinite, and uncertain as to preclude him from adequately preparing a defense and that he was not afforded 10 days' notice of the specific charges of misconduct made against him at the hearing as required by law.

The court noted that the charges against the teacher were couched in general language and contained no specific facts. However, the teacher had not asked the board to furnish him with a more definite statement of facts. Had he done so, the court said, the board would have been required to furnish him with such.

As to the teacher's contention that he was denied 10 days' notice of the charges before being required to appear at the hearing, the court noted that almost one and one-half months elapsed between the time the teacher was first notified of his suspension and the time the hearing was held; that although the teacher was served with specific charges only on the day of the hearing, at no time did he request a continuance of the hearing on the ground that he was taken by surprise or that he did not have an adequate time to prepare his defense. The court held that since the teacher had failed to demonstrate that he had been prejudiced by the alleged insufficiencies of the notice of

charges or by a lack of sufficient time to prepare his defense, such errors, if any, were harmless and did not justify reversal of the action of the board on these grounds.

The court, however, found merit in the teacher's argument that the board departed from essential requirements of law in failing to make any findings of fact based upon the evidence adduced at the hearing and in failing to render a final order specifying the charges of which he was found guilty and on which the order terminating his employment was based. The court agreed with the reasoning of the teacher that unless such a final order is entered, he is in no position to demonstrate to the reviewing court that the board's action is erroneous. In terminating a teacher's contract, a school board's final order which is couched in such general language as to amount to nothing more than a "verdict of guilty as charged" is insufficient. Due process as well as Florida law, the court held, requires that the final action of the agency be reduced to writing, contain findings of fact based upon the evidence, and specifically state the charges which the agency finds to have been sustained.

The action of the board of education was quashed, and the case was remanded with directions that the final order as outlined by the court be entered.

Pyle v. Washington County School Board
238 So.2d 121
District Court of Appeal of Florida, First District,
July 7, 1970; rehearing denied August 14, 1970.

A former teacher petitioned the court to review his dismissal by the Washington County school system. The teacher had been employed as a band instructor by the school district. Complaints from parents concerning the lack of discipline in his classes came to the principal, and such further complaints, including indelicate sexual comments he made in class, came to the superintendent. The teacher was notified in writing of the nature of the complaints, and two days later was further notified that he was suspended and he had a right to a hearing. A public hearing was held approximately 30 days after the suspension; the teacher was present and was represented by counsel. Since an official court reporter was not available at the hearing, it was agreed by the parties that the secretary to the superintendent could make a transcript of the proceedings.

Contrary to the contentions of the teacher on appeal, the court found that no constitutional rights of the teacher were violated nor was there any violation of his rights under the rules of professional practices. The court noted that the teacher was aware of the charges, and was given ample time to prepare a defense. The teacher also argued that the evidence did not substantiate the charges of incompetency and immorality. The court found that there was sufficient competent evidence to substantiate the two charges. As to the immorality charge, the court stated that there was evidence of unbecoming and unnecessary risque remarks made by the teacher in a class of mixed teen-age boys and girls which, the court agreed with the school board, were of an immoral nature. The last point raised by the teacher on appeal was that the administrative procedures utilized at the hearing were not according to statute. The court found the only departure from the statute was the absence of a court reporter and this requirement had been waived by the parties. For these reasons the court declined to review the case.

Georgia

Hood v. Rice
172 S.E.2d 170
Court of Appeals of Georgia, Division No. 2
November 7, 1969; rehearing denied November 24, 1969.

A former teacher appeared before the Atlanta Board of Education seeking back pay and pension benefits. She alleged that in February 1952 she was discharged without notice, charges, or a hearing. Other personnel testified that she had voluntarily terminated her employment at that time. The Atlanta board denied her any relief. This decision was affirmed by the state board on appeal. The teacher then appealed to the court which found that she had voluntarily left her employment and was not entitled to any unpaid wages or benefits. The teacher appealed that decision, alleging 24 specific errors.

Prior to the hearing on the present appeal, six of the enumerations of the teacher had been disposed of. This court considered the remaining allegations of the teacher. The first was that the local board was prejudiced and did not give her a fair hearing since at the start of its hearing the chairman stated that it was the contention of the board that she left her employment of her own volition. The court disagreed with the teacher, stating that these remarks were nothing more than a statement of the issues and not a prejudgment of the case.

The teacher also alleged that it was error for the local board to place the burden of proof on her rather than on the board. The court held that this enumeration was without merit in that the plaintiff in an action always has the burden of proof. The teacher then maintained that the orders of both the local and state boards were void in that they contained no findings of fact or conclusions of law as were necessary under the Georgia Administrative Procedure Act. The court noted that this act did not apply to the local school board in that it was not an "agency" as defined under the act and did not apply to the state board of education since it had heard the case as an appellate body and not *de novo*. The remaining enumerations of error were also dismissed, and the judgment of the trial court was affirmed.

Illinois

Van Dyke v. Board of Education of School District No. 57, Cook County, Illinois
254 N.E.2d 76
Appellate Court of Illinois, First District, First Division,
June 6, 1969; rehearing denied December 18, 1969.

A principal who had been transferred by the board of education to the position of classroom teacher at a lower salary sought a reversal of that action. He alleged that he was transferred because he refused to resign and that this transfer was a violation of his tenure rights. The principal notified the board that he considered the action a dismissal

and requested a bill of particulars and a public hearing. A hearing was held and the transfer was reaffirmed.

The school board moved to dismiss the court action, contending that any hearing furnished the principal was gratuitous and not required by statute and that since its decision was merely a transfer and not a tenure dismissal action, the principal was not entitled to any administrative review. The trial court agreed with the board and dismissed the action; the principal appealed.

The principal contended that his transfer with a reduction in salary was a violation of his tenure rights and that the action of the board was in the nature of "chicanery or subterfuge designed to subvert the provisions of the Teacher Tenure Law." The school board, on the other hand, contended that it had the express power under the tenure law to transfer the principal, and that it had done so in full compliance with the law.

The court held that under Illinois tenure law "a principal does not acquire tenure as a principal but does acquire tenure as a certified employee of the school district." The court ruled that a principal could be transferred to a teaching position at a reduced salary so long as the reduced salary was "based upon some reasonable classification" and provided that the action was bona fide and not designed to subvert the provision of the tenure law. The court held that these guidelines had been met and that the transfer of the principal to a teaching position was within the law. The judgment of the lower court was upheld.

Wells v. Board of Education of Community Consolidated School District No. 64
257 N.E.2d 252
Appellate Court of Illinois, First District, Third Division, February 19, 1970.

(See *Teacher's Day in Court: Review of 1967*, p. 26.)

It had previously been judicially determined that the teacher had been wrongfully discharged and the school board was ordered to reinstate her as a teacher of trainable mentally handicapped children. At the time of her discharge, the teacher was on the ninth level of the salary schedule, where she had been for two years. Following reinstatement the teacher sought damages for the four years that she had not been employed by the school board. In computing the damages the trial court assumed that the teacher would remain at the ninth experience salary level for the four-year period, that the base salary for each year would be the same as that actually used by the school district in computing the salary of the regularly employed teachers, and that the teacher would receive the $300 special education additive that she had received for teaching handicapped children. The court also offset the damages by the amount that the teacher had received by teaching in Wisconsin for the four years. Both the teacher and the board appealed.

The teacher contended that the trial court should have assumed that she would have advanced one experience level each year and that her Wisconsin earnings should not have been used to set off the damages since she was not required to travel 90 miles from her home for other employment. The board contended that the base salary used should have been that which the teacher was receiving when discharged and that the $300 additive should not have been included as an element of damages.

The appellate court found that advancement on the salary schedule was not automatic each year since under the prevailing practice in the district, it depended upon the recommendation of the principal and the superintendent and the approval of the board of education. Also, the teacher had not been advanced on the salary schedule in the school year preceding her discharge.

The court also found that the Wisconsin earnings of the teacher were rightfully used to offset damages. The court said that even if it was assumed that the teacher was not bound to accept employment in Wisconsin, once she had done so, her earnings there would be used to mitigate damages.

The court disagreed with the school-board contention that the base salary used to compute damages should be the one in use when the teacher last taught in Illinois. In fact the base salary had increased each year and if the teacher were not wrongfully discharged, her base salary would have likewise increased. The court said that the same applied to the $300 special education additive.

The decision of the trial court was affirmed.

Kentucky

Snapp v. Deskins
450 S.W.2d 246
Court of Appeals of Kentucky, January 23, 1970.

(See page 55.)

Louisiana

Campo v. East Baton Rouge Parish School Board
231 So.2d 67
Court of Appeal of Louisiana, First Circuit, February 2, 1970.

A senior high-school band instructor who had been demoted to the same position on a junior high-school level sought court review of his demotion. The school board failed to file any pleadings in the matter and the trial court entered a default judgment in favor of the teacher. The school board then sought a new trial, alleging that the trial court had erred in granting the default judgment since the teacher had not made out a *prima facie* case in that his petition contained no allegation that the hearing held before the school board was not conducted according to law. The trial court denied the motion for the new trial and the school board appealed.

The tenure teacher had been a junior high-school band instructor when he was appointed as band instructor in the senior high school. Shortly after the appointment, difficulties arose between the teacher and the principal of the high school and the supervisor of music for the school system. The teacher was given the option to voluntarily return as band instructor to the junior high school or to face dis-

missal at a later date. Many communications passed between the parties in the next months with the teacher refusing to accept the junior high-school position. Charges of incompetency and willful neglect of duty were eventually brought against the teacher. After a hearing the school board found him guilty of the charges, and he was reassigned to the position of band director at the junior high school.

The appellate court reviewed the tenure statutes of Louisiana and noted that the trial court serves as an appellate court in reviewing decisions of a school board. The record showed that the only evidence before the trial court was two letters from the teacher's attorney to the school-board attorney, informing the latter that default judgment would be entered if an answer was not filed, and a sealed and unopened transcript of the hearing before the school board. The appellate court ruled that a default judgment could not be entered unless a *prima facie* case was made out by the teacher. Since no evidence of any kind was entered to support the teacher's case, the trial court was in error in granting the judgment against the school board and a new trial should have been granted. The judgment of the trial court was reversed.

Hayes v. Orleans Parish School Board
237 So.2d 681
Supreme Court of Louisiana,
June 29, 1970; rehearing denied July 30, 1970.

(See *Teacher's Day in Court: Review of 1969*, p.24.)

A tenure teacher sought an injunction against the school board to prevent her demotion. The trial court granted the injunction which the intermediate appellate court affirmed, and the school board appealed further.

The teacher had been with the school system for over 20 years. She was selected to supervise Project Headstart in May 1965. She subsequently supervised the Teachers' Aide Project until August 1968. Both of these programs were federally funded. In July 1968, the teacher was informed that she was being released from her position as supervisor because the project was over and was being reassigned to her former position as consultant. The reason given for this action was the policy of the superintendent not to grant tenure to any employee under a federally funded program that was subject annually to a cancellation of funds. The reassignment resulted in a substantial reduction in salary.

The teacher contended that she had acquired tenure in her position as supervisor and that her reassignment was a demotion and a "removal from office" in violation of the teacher tenure law. The school board asserted that the tenure law was inapplicable to positions in federally funded programs.

The state supreme court noted that the tenure law was enacted to assure the continued employment of worthy teachers within the regularly maintained school system. The court held that within the intention of the tenure law *office* means a regular position in the school system maintained by recurring state or local revenues. The court concluded that the term *office* was inapplicable to a position in the special Teachers' Aide Project that was federally funded and consequently the teacher had not acquired tenure in the position of supervisor. The judgments of the lower courts were reversed, and the preliminary injunction against her reassignment was dissolved.

Massachusetts

Keefe v. Geanakos
418 F.2d 359
United States Court of Appeals, First Circuit,
November 12, 1969.

A tenure teacher who had been suspended and threatened with dismissal sought a preliminary injunction to enjoin the school committee from voting on his discharge. The district court denied the motion (305 F.Supp. 1091) and the teacher appealed.

The suspension arose because of an *Atlantic Monthly* (student edition) article that the teacher had assigned to his senior English class. The article contained a vulgar word. In class the teacher discussed the article and the word, explaining its origin and context and the reasons for its usage by the author. He also stated that any student who felt the assignment personally distasteful could have an alternative one. The following evening the teacher was asked to appear before the school committee and defend his use of the offending word. He was asked if he would agree not to use it again in the classroom, and he replied that he could not in good conscience agree. Subsequently he was suspended as a matter of discipline, and it was proposed that he be discharged.

The teacher maintained that as a matter of law his conduct did not warrant discharge, and accordingly there was no reason to hold a hearing on that action. He asserted first that his conduct was within his competence as a teacher, as a matter of academic freedom, whether or not the school committee approved; and second, that he had been given inadequate prior warning by such regulations as were in force that his actions would be considered improper. The school officials, while accepting the existence of the principle of academic freedom to teach, stated that it is limited to proper classroom materials as determined by the school committee in light of pertinent conditions, in particular, the age of the students.

The court reviewed the article in question, which had been described as a valuable discussion of "dissent, protest, radicalism, and revolt." The court found the article to be scholarly, thoughtful, and thought provoking and that the single offending word, "a vulgar term for an incestuous son" was not artificially introduced but was important to the thesis and conclusions of the author, and was used as a superlative of approbrium. Nor was the word one that high-school seniors would be unfamiliar with and, in fact, was found in some books in the school library. Hence the question in this case, the court said, was "whether a teacher may, for demonstrated educational purposes, quote a 'dirty' word currently used in order to give special offense, or whether the shock is too great for high school seniors to stand." The court said it did not question the good faith of the school committee in believing that some parents would

be offended, but with greatest of respect to such parents "their sensibilities are not the full measure of what is proper education." While the court agreed that the obscenity standard for adult consumption is not determinative of what is proper classroom speech, still, under the circumstances, academic freedom was interfered with.

Since on this appeal the substantive issues of academic freedom and lack of notice were extensively briefed and argued before the appellate court, instead of granting interlocutory relief pending a determination of the issues on further appeal, the appellate court decided on the basis of the merits that the denial of the injunction of the lower court should be reversed. The case was remanded with directions to the lower court to reinstate the teacher.

New Mexico

Brininstool v. New Mexico State Board of Education
466 P.2d 885
Court of Appeals of New Mexico, March 6, 1970.

A tenure teacher appealed from a decision of the state board of education which affirmed the local board decision discharging her. Two days prior to the end of school, she had received notice that she would not be re-employed with the hearing scheduled shortly thereafter. Her attorney sought a continuance to prepare a defense, but this was denied. The local board discharged her following the hearing.

A statutory provision requires notice to the teacher prior to the end of school. State board of education regulations require notice at least two weeks prior to the end of school. The court found that this did not present a conflict since notice at least two weeks prior to the last day of school would satisfy both the statute and the rule.

The court found that the two days' notice given the teacher, and the failure of the local board to follow the notice requirement of the state board regulation amounted to unfairness. This issue of unfairness, the court said, was clearly before the state board. Contrary to the opinion of the state board, the court found the lack of timely notice to be prejudicial to the teacher.

The state and local boards also argued that the state board lacked the authority to promulgate the regulation, but the court disagreed. The court concluded by stating that "the failure of the Local Board to give timely notice, as provided by the regulation, constituted a substantial departure from the procedures and regulations prescribed by the State Board." The decision of the state board was reversed with directions to reverse the decision of the local board.

Quintana v. State Board of Education
472 P.2d 385
Court of Appeals of New Mexico,
May 28, 1970; certiorari denied, July 2,
1970, 472 P. 2d 382.

A tenure teacher appealed from the decision of the state board of education, holding that he did not have tenure rights as a principal. The teacher had been serving as a school principal in the Espanola Municipal Schools. The local board did not re-employ him as principal, but gave him an assignment as a classroom teacher. The teacher alleged that he could not be reassigned to a lower position except in conformity with the tenure law of the state and that since its provisions were not followed and no hearing was held by the local board, his reassignment was improper. The teacher appealed to the state board which held that tenure rights did not apply to a reassignment from principal to teacher and that there was no right to a hearing on the transfer.

On appeal to the court the teacher asserted that the transfer was a demotion since a teacher is not the same grade as a principal and that because of the "change in grade," statutory tenure rights concerning notice and a hearing applied. The court held that under the tenure law the authority of the state board to hear appeals from decisions of local boards applies to decisions rendered following a local board hearing. Since no such hearing was held in this instance, there was no right to appeal to the state board. And since the state board lacked authority to hear the teacher's appeal, the court likewise had no authority to hear the appeal. The court said, however, that the teacher was not without a remedy since he could still bring an action in mandamus to test his right to a hearing before the local board.

Tate v. New Mexico State Board of Education
466 P.2d 889
Court of Appeals of New Mexico, March 6, 1970.

A tenure teacher appealed from a decision of the state board of education upholding a local school-board decision not to re-employ her. The material findings of fact and conclusions of law in this case are the same as those in *Brininstool v. New Mexico State Board of Education* (this page). The court found that case controlling and reversed the decision of the state board with directions that the holding of the local board be reversed.

Wickersham v. New Mexico State Board of Education
464 P.2d 918
Court of Appeals of New Mexico, January 16, 1970.

A local school board refused to re-employ a tenure teacher. The state board of education affirmed that decision, and the teacher appealed to the court contending that there was a lack of substantial evidence to support the initial decision. The teacher additionally claimed that the decision of the state board was arbitrary, unreasonable, unlawful, and capricious. He also attacked the proceedings before both boards. The review of the court was limited to a determination of whether the action of the state board was as claimed.

The local board had determined that the teacher demonstrated inefficiency and incompetence and that his work performance was unsatisfactory. The court held that there was substantial evidence to support these charges and that the evidence was not deprived of substantiality because there was conflict in the evidence.

In contending that the procedures used by the local board were unfair, the teacher argued that the decision of

the local board not to re-employ him was prejudiced in that the decision not to re-employ a teacher is made before he is given an opportunity to defend himself. The court did not agree, noting that the board followed the procedure set out in the statute. As to the teacher's argument that the board both made the charges and heard the case, the court said that these overlapping functions did not establish that the proceedings were unfair. Additional arguments of the teacher pertaining to the speed of the local board's decision and the withholding of a report critical to the teacher did not, in the view of the court, make the proceedings unfair to the teacher.

The court also did not find that the procedures before the state board of education were incorrect, as claimed by the teacher, or that the state board failed to give due consideration to the evidence in the record.

Further, in reaching its decision, the state board was not required to make evidentiary findings or to recite the evidence relied on.

The court affirmed the state board decision on the basis that it was not arbitrary, unreasonable, unlawful, or capricious.

New York

Agresti v. Buscemi
312 N.Y.S. 2d 849
Supreme Court of New York, Appellate Division,
Second Department, June 15, 1970.

(See *Teacher's Day in Court: Review of 1967*, p. 32; *Review of 1966*, p. 27.)

In 1967 the appellate court remanded this case for trial to determine if the teacher had acquired tenure as an elementary-school principal. The court determined that she had and the school district appealed.

The teacher had served two years as a probationary principal and then had taken sabbatical leave to pursue graduate studies. Prior to this leave the teacher was informed that the leave would extend the probationary period as principal.

Testimony at the trial indicated that the teacher clearly did not perform day-by-day functions as an elementary-school principal and that documentary evidence established that she did not pursue the study program for which the sabbatical leave was granted. The appellate court concluded that the services the teacher performed, when considered along with the graduate studies pursued, did not satisfy the required three-year probationary period to obtain tenure in the position of elementary-school principal.

However, the court held that the teacher had attained tenure as an elementary-school assistant principal although she had served in that position for less than three years. The court held that since the teacher had served a total of five years in the two positions, although not three years in either one, and since the school district did not designate the two positions as separate tenure areas, the teacher was entitled to tenure in the lower position.

The judgment of the trial court was modified and affirmed as modified.

Application of Yorke
306 N.Y.S.2d 343
Supreme Court of New York, Special Term,
Nassau County, Part I, December 17, 1969.

A tenured teacher sought review of the determination of the Board of Education of Union Free School District No. 22, Town of Hempstead, that dismissed him. The determination was made after a notice of charges was served on the teacher, including a complete set of specifications. The teacher requested a public hearing before the board, at which time he was represented by counsel. The decision of the board included only a list of which specifications it found proved and which ones were dismissed or the teacher was acquitted of.

In his petition to the court the teacher claimed he was not afforded the opportunity to have counsel present when he was questioned by his superiors prior to charges being preferred. The court ruled that the teacher was not entitled to counsel during investigatory inquiries unless that right was conferred by statute. The applicable statute provides for a hearing on charges and only mentions counsel "at such hearing" and is silent on the right to counsel at any investigation preliminary to the lodging of charges.

The teacher also claimed that the record was defective because of the absence of findings by the board. The court found this point to be well taken, citing the rule that "determinations subject to judicial review must be based on findings which are sufficient to inform the court and parties as to the findings made, the basis of the findings, and whether the findings are supportable by the evidence."

The board had also been informed by its attorney that it could consider matters of personal knowledge. This, the court said, was permissible only if the personal knowledge was made known to the teacher and was made subject to cross-examination so that a defense could be presented and a proper record made.

The case was remanded to the board so that appropriate findings could be made, including whether the board members' personal knowledge of the charges had been considered, and if so, the hearing should be reopened to permit the teacher to cross-examine with respect to this and to offer evidence in refutation.

Fila v. Nyquist
313 N.Y.S.2d 140
Supreme Court of New York, Albany County,
July 24, 1970.

A teacher brought a court proceeding to annul a decision of the state commissioner of education which denied him tenure. In 1965, the teacher was appointed director of a four-county vocational educational program, a program funded by the federal government. The following June he was appointed director of vocational education for the board of cooperative education services (BOCES) for a three-year probationary period. In April 1969, he was formally notified that he would not be granted tenure and that his services would be terminated as of July 1, 1969.

The teacher alleged that during his first year of employement he spent the majority of his time as director of vocational education for BOCES, and, therefore, he had

served in that position for four years and had acquired tenure by acquiescence or estoppel and that the decision of the commissioner to the contrary was illegal and required reversal.

The court rejected the teacher's conclusion that he had acquired tenure, since he was formally advised in June 1966 that he would serve a three-year probationary period and 60 days prior to the expiration of that period he was notified that he would not be granted tenure. The court found that the four-county vocational educational program was created as a temporary body which would cease to exist when its duties were completed; that the teacher was a temporary employee of that body and as such acquired no probationary time which could be credited to tenure during the 1965-66 year. The court further found that BOCES was within its authority under the teacher tenure law in denying the tenure to the teacher and the state commissioner did not act illegally by confirming the action of the board. Accordingly, the teacher's petition was dismissed.

Keiser v. Board of Education of Central School District No. 1
314 N.Y.S.2d 883
Supreme Court of New York, Appellate Division, Third Department, October 26, 1970.

A tenure teacher appealed from two judgments of the trial court dismissing his complaints. The cases were consolidated on appeal. The teacher's employment as a mathematics teacher had been terminated after he had achieved tenure. He sought reinstatement, contending that the schedules of other teachers' assignments had been manipulated so that their employment would be preserved even though they had less tenure. In his second complaint, the teacher charged that when a science teacher resigned, the board should have filled the vacancy with teachers qualified in both science and mathematics, leaving the mathematics position open for him. He also asserted that the board changed the designation of his former mathematics course to a course in another department, although the subject matter remained the same.

The appellate court found no merit in the teacher's contentions. The record reflected that all remaining mathematics teachers had more tenure than the plaintiff and that there was no new position created which would have entitled the teacher to be employed. In the first complaint the trial court had found that the teacher's tenure had not been arbitrarily violated and in the second complaint concluded that the school board was not required to shift two teachers from one subject to another so that the teacher could be rehired, and his only remedy was to appeal to the state commissioner of education. The appellate court found no error in these findings and affirmed the decision of the trial court.

Vamvakis v. Board of Education, Locust Valley Central School District No. 3
305 N.Y.S.2d 544
Supreme Court of New York, Special Term, Nassau County, Part I, November 21, 1969.

A teacher sought reinstatement as department chairman and tenure in that position. She had been employed as a foreign language teacher and had served as department chairman since her appointment to the school system in September 1963 and had acquired tenure as a foreign language teacher three years later. In March 1969, the teacher was informed that she would not be continued as department chairman. The teacher maintained that she had acquired tenure as department chairman and could not be removed except upon formal charges pursuant to law.

The teacher also alleged, without factual support, that she had spent over one-half of her time in her duties as department chairman. The court, however, found uncontradicted that the teacher taught 80 percent of the normal teaching load and that her service as department chairman was only part time.

The court noted that in determining tenure in a particular area the commissioner of education has applied the test of whether the teacher spent more than one-half of his time in the performance of duties in that area. In this case an agreement entered into by the school board under the public employment negotiation statute applied a 40 percent test for granting tenure as a department chairman.

The court held that the teacher failed to prove that she even came within the lesser requirements of the agreement. The petition of the teacher was dismissed.

Pennsylvania

Brownsville Area School District v. Alberts
260 A.2d 765
Supreme Court of Pennsylvania, January 9, 1970.

The school board appealed from a lower court decision which upheld an order of the superintendent of public instruction to reinstate an assistant supervising principal who had been dismissed after a hearing. The charges against the assistant principal arose when he accepted pay from the federal government for supervising a Head Start Program during two summer months while at the same time receiving his regular compensation from the school district as assistant supervising principal. He undertook this responsibility at the request of his superior. The unrefuted testimony of the assistant principal showed that during this time he spent some seven or nine hours a day on his duties for the school district in addition to the time spent with the Head Start Program.

The charges of incompetence and persistent negligence which were brought against the employee rested upon allegations that he had acted improperly in receiving the dual compensation and that he had failed to furnish the supervising principal with the payroll records from the Head Start Program.

There was conflicting evidence as to whether the employee was informed that he could not receive the dual compensation. The trial court resolved this in favor of the employee. The higher court could not conclude that this was an error. It found that receipt of the compensation was neither incompetence in the sense of insubordination nor persistent negligence. The second allegation, the failure to provide the payroll records, despite several requests was

also found by the higher court to be without merit. The employee testified that he had never been asked to provide them. His supervising principal testified only that he had failed to provide them, not that he had refused to do so. The appellate court believed that even if the issue were resolved in favor of the school district, the evidence was insufficient to support a finding of "persistent negligence" within the meaning of the tenure law.

The district additionally charged the employee with immorality. This had been previously defined by Pennsylvania courts to include "a course of conduct as offends the morals of the community and is a bad example to the youth whose ideals a teacher is supposed to foster and elevate." However, the appellate court found no evidence of state or federal rules or regulations that prohibited dual compensation. Nor was there evidence that the employee received payment for services not rendered or that he was paid twice for the same services.

The higher court found that the district had failed to establish that the employee was persistently negligent, incompetent, or immoral within the terms of the tenure law. The holding of the lower court was therefore affirmed.

Tennessee

Blair v. Mayo
450 S.W.2d 582
Supreme Court of Tennessee,
February 1, 1970.

A principal and an assistant principal, both tenured, sued the superintendent and the members of the board of education to prohibit their demotion to classroom teachers. The board had acted summarily without notice or specification of charges. The lower court granted a preliminary injunction, whereupon the board of education met and voted to dismiss one of the employees as a classroom teacher. The lower court subsequently permanently enjoined the board from dismissing or transferring the two employees until written charges were filed against them in accord with the tenure law. The school board appealed this decision.

The opinion of the lower court included the information that the son of a prominent local citizen had been permanently expelled from the school, whereupon his father sought to have the principal and the assistant principal removed from office. Most of the board members who testified had little or no knowledge of the facts but voted against the two employees because of what they had heard from other board members.

In its appeal, the board charged that the lower court was incorrect in its holding because the Tennessee law does not require an administrative hearing on a transfer from an administrative position to a classroom teacher position. This contention was overruled. The court held that the action of the school board in summarily demoting the two employees without giving them any reasons was in effect a dismissal from the existing administrative positions in violation of the state tenure law. Therefore, the court affirmed the lower court decision that both employees be reinstated to their previous positions.

Hatton v. County Board of Education of Maury County, Tennessee
422 F.2d 457
United States Court of Appeals, Sixth Circuit,
February 26, 1970.

A discharged black teacher sought an injunction to compel her reinstatement with back pay. The lower court denied relief and the teacher appealed.

The facts showed that the black teacher was tenured and had been dismissed two days before school began. The reason given for dismissal was that her position had been eliminated owing to a decline in enrollment and a decrease in Title I funds. The school board contended before the district court that the teacher was incompetent. The district court declined to make a finding on the question of incompetency, pointing out that this could become an issue under the state teacher tenure law.

In deciding in favor of the teacher, the appellate court found significant that nontenure white teachers had been employed in Maury County after her discharge. This was contrary to the tenure law which provided that a tenure teacher who has been discharged because of a decrease in enrollment was to be placed on a preferred list for reemployment in the first vacancy he or she was qualified to fill. If the board of education discharged the teacher because of incompetency, this was also contrary to the tenure law in that its procedures as to notice and charges were not followed.

The judgment of the district court was reversed with instructions to issue an order directing that the teacher be reinstated with pay from the date of her dismissal.

Utah

Brough v. Board of Education of Millard County School District
463 P.2d 567
Supreme Court of Utah, January 8, 1970.
Certiorari denied, 90 S.Ct. 1818, May 25, 1970.
(See *Teacher's Day in Court: Review of 1969*, p. 30.)

A teacher was dismissed for failing to accept a transfer to another school. The lower court entered a judgment for the teacher and the school district appealed. The Supreme Court of Utah reversed the decision and remanded the case to the lower court with directions that a judgment be entered for the school district. In the present proceedings the teacher sought a rehearing of that decision.

The teacher had failed to attend a school workshop where federally financed materials were to be demonstrated. The court said that the teacher "was undoubtedly entitled to his freedom of thought and of speech in regard to his declared aversion to the use of federal funds in the public schools. However, his opposition and refusal to cooperate in carrying out the policies determined by those charged with the duty of administering school affairs was a factor which those officials could properly consider in fulfilling their responsibilities." The court held that the refusal of the teacher to accept the transfer the board directed was conduct which the board could reasonably

regard as insubordination justifying his dismissal. The petition for rehearing was denied.

Washington

Lande v. South Kitsap School District No. 402
469 P.2d 982
Court of Appeals of Washington, Division 2,
April 22, 1970.

(See page 21.)

West Virginia

State ex rel. Withers v. Board of Education of Mason County
172 S.E.2d 796
Supreme Court of Appeals of West Virginia,
March 17, 1970.

The board of education appealed from a lower court decision that held that its transfer of two employees was arbitrary and capricious and ordered their reinstatement. One employee had been principal and the other had been assistant principal of a high school before the board attempted to transfer them for the 1969-70 school year. Notice was sent to both, stating "inadequate planning and supervision" as the reasons for the transfers. The two then appeared at a meeting of the board at which their transfers were discussed.

The trial court had held and on appeal the teachers had contended that there was a fatal variance between the notice mailed to the employees and the "matters" subsequently acted upon by the board in approving the transfers.

The appellate court held that there is not the same right to a full hearing on a transfer as for a dismissal. The employees had been notified of their reassignment pursuant to law. The court pointed out that the pertinent statute required only that notice be given to an employee who is being recommended for transfer and subsequent assignment, but it is not required that the notice state the reasons for the superintendent's recommendation. In reversing the lower court decision, the court said it was unable to perceive any reasonable basis for the conclusion that the school board abused its discretion or acted in an arbitrary or capricious manner in ordering the transfers. The case was remanded for further proceedings consistent with this opinion.

Wisconsin

Lafferty v. Carter
310 F.Supp. 465
United States District Court, W. D. Wisconsin,
March 9, 1970.

Four university professors, two with tenure and two without, were suspended with pay and barred from the campus of Wisconsin State University—Whitewater. They sought a temporary restraining order to reinstate them. Preceding the suspensions the four had been engaged in demonstrations and other activities, including a student boycott of classes and a protesting of the removal of a department chairman. The university president feared that the protests, although nonviolent, might become violent and thus decided to suspend the four because they had been instrumental in the organization and continuation of the student boycott. The notices of the suspension stated that the reason behind the action was that the university president found "that harm to this University may result if you are continued in your present position." This court suit was commenced the day after the suspension notices were sent. The complaint alleged that the professors were suspended without prior specification of charges, notice of hearing, or hearing.

The granting of a preliminary injunction requires a finding of irreparable harm and an ultimate chance of success. The court found that barring the professors from the campus would result in irreparable harm in terms of their careers and professional standing. However, if they were permitted access to the campus, they might undertake to recreate or preserve the atmosphere that resulted in the class boycotts. In view of these competing considerations, the court evaluated the professors' ultimate chance of success in the lawsuit in terms of their two main contentions. The first was that their substantive rights under the First and Fourteenth Amendments were being violated. The court declined to grant the temporary restraining order on this basis since it felt that their ultimate chance of success was not sufficiently clear.

The second contention was that the professors had been denied procedural due process guaranteed by the Fourteenth Amendment. The court felt that they had a good chance, of ultimate success on this issue. It pointed out that prior to the suspension none had been notified of the nature of the charges against him, none had been informed that he could be heard on the charges, and none had been heard. Even the suspension notice failed to state in any intelligible way the basis for the action. The court noted that *Stricklin v. Regents* (297 F.Supp. 416, (1969)) prescribes a hearing on the issue of suspension for students, before any suspension can be effectuated. The court held that the procedural due process afforded a professor cannot be less than that afforded a student.

The court held that since irreparable injury to the professors would result from being barred from the campus, this sanction could not be imposed without due process. The professors were ordered reinstated with the provision that the university could impose an interim suspension pending a full hearing in accordance with the principles of *Stricklin.*

Lessard v. Van Dale
318 F.Supp. 74
United States District Court, E. D. Wisconsin,
October 22, 1970.

A public-school teacher who alleged that she was discharged without cause and denied a public hearing as provided for by statute sued the individual members of the West Allis-West Milwaukee board of education under the federal civil rights act. The members of the board moved to dismiss the action.

Although suit was brought against the individual members of the board, the court found it clear that the act complained of had been performed by the board of education as a body. The court ruled that under the decision in *Abel v. Gousha* (see page 71 of this report) the suit must be dismissed. The court was of the opinion that the teacher's allegations that she was dismissed without cause and denied a hearing contrary to state statute, standing alone, were not enough to state a cause of action against the members of the school board in their individual capacities. Therefore, the complaint of the teacher was dismissed.

Worthington v. Joint School District No. 16
316 F.Supp. 808
United States District Court, E. D. Wisconsin,
September 3, 1970.

A teacher who was not rehired sought a retrial order reinstating her pending the ultimate outcome of the suit. The teacher alleged that her procedural and substantive rights were violated.

With regard to the procedural due process claim, it appeared that the teacher had been notified by mail in February 1970 that the nonrenewal of her contract was being considered by the board. Through her counsel she requested a meeting with the school board. At the meeting held pursuant to that request the teacher was present with counsel. Although there was some disagreement as to what took place at the meeting, especially whether the teacher was furnished with a list of reasons for her nonretention, the court was persuaded that there was adequate compliance with the minimal requirements of procedural due process.

With regard to the claim of the teacher that her substantive rights under the Fourteenth Amendment were violated, the court found that there was disagreement between the parties as to her conduct as a teacher. The court stated that if the reasons set out in the affidavit of the school principal were true, the nonretention of the teacher was lawful. Concluding that the teacher had not made a sufficient showing of probable success on the merits, the court refused to grant her application for a summary order of reinstatement.

Nontenure Teachers

The following cases involved teachers who were on probationary status or teachers in states without tenure protection.

Alabama

Parducci v. Rutland
316 F.Supp. 352
United States District Court, M.D. Alabama, N.D.,
June 9, 1970.

A dismissed high-school teacher brought suit against officials of the Montgomery school district, charging that her dismissal violated her First Amendment right to academic freedom and her Fourteenth Amendment right to due process of law.

The teacher had assigned as outside reading to her eleventh-grade English class a short story, "Welcome to the Monkey House." The next day the teacher was called into conference with the principal and the associate superintendent who expressed displeasure with the story. They described it as "literary garbage" and construed it "as condoning if not encouraging 'the killing off of elderly people and free sex.'" They also expressed concern over the fact that three of the teacher's students had asked to be excused from the assignment and some parents had called the school to complain. The teacher replied by stating that she had not meant to cause trouble, but that she considered the story a good literary work and that she felt that she had a professional obligation to teach the story. The associate superintendent then informed the teacher that he would have to report the incident to the superintendent who might dismiss her. By this time the teacher was quite upset and tendered her resignation.

The teacher then sought a preliminary restraining order which was denied. However, the school officials agreed to allow the teacher to withdraw her resignation and to accord her a hearing on the question of her dismissal even though as a probationary teacher she was not entitled to a hearing under state law. After the hearing before the school board, at which both sides participated, the teacher was dismissed for assigning materials which had a "disruptive" effect in the school and for "refusing the counseling and advice of the school principal." Another basis for dismissal was "insubordination" because of her statement that she used whatever material and taught in whatever manner she thought best.

The teacher then renewed her application for a preliminary injunction, seeking immediate reinstatement.

The teacher asserted that her dismissal for assigning the short story violated her right to academic freedom. In this regard, the court said that it is well recognized that teachers are entitled to First Amendment freedoms and the constitutional protections are unaffected by the presence or absence of tenure under state law. And although the right to academic freedom is not enumerated in the First Amendment, the Supreme Court has emphasized that the right to teach, to inquire, to evaluate, and to study is fundamental

to a democratic society. This right to academic freedom, however, the court stated, is not absolute and must be balanced against the interests of the school. The court then carefully considered the short story itself and found that although it did contain several vulgar terms, the story could not be considered obscene; and that rather than advocating the killing of the elderly, the story "satirizes the practice to symbolize the increasing depersonalization of man in society." The court found the story appropriate for high-school juniors, and this was confirmed by the reaction of the students themselves. Rather than there being a threatened or substantial disruption of the educational process, the court said, the assignment was greeted with apathy by most of the students. The court concluded that the conduct for which the teacher was dismissed was not such that would "materially and substantially interfere with" reasonable requirements of discipline in the school. Since the school officials had failed to show that the short story was inappropriate for high-school juniors or that the educational processes were disrupted by the assignment, the court concluded that the teacher's dismissal constituted an unwarranted invasion of her First Amendment right to academic freedom.

The teacher also alleged that she was denied the right to use the short story without a clear and concise written standard to determine what books are obscene. The record in the case showed that there was no written or announced policy in the high school governing the selection and assignment of outside materials and that it was a matter to be determined solely by each teacher. The question before the court on this point was whether under the due process clause of the Fourteenth Amendment the teacher was entitled to prior notice that the conduct for which she was punished was prohibited. The court said that when conduct being punished involves First Amendment rights, as in this case, strict standards are applied in judging permissible vagueness. But here, the concern was not merely vague standards but a total lack of standards. The court said further: "When a teacher is forced to speculate on what conduct is permissible and what conduct is proscribed, he is apt to be overly cautious and reserved in the classroom. Such a reluctance on the part of the teacher to investigate and experiment with new and different ideas is anathema to the entire concept of academic freedom." The court did not find in this case that any substantial interest of the schools was served by allowing officials unfettered discretion to decide how the First Amendment rights of teachers would be exercised.

The court also commented that a number of books on the reading lists for eleventh- and twelfth-grade students as well as a number of books in the school library contained controversial words and philosophies, some more so than the story assigned by the teacher. Under the circumstances of this case, the court said, the school board could not justify the teacher's dismissal under the guise of insubordination.

The court ordered that the teacher be reinstated, that she be paid all lost salary for the time of suspension, and that all reference to the suspension and dismissal be expunged from her record.

Connecticut

Jones v. Battles
315 F.Supp. 601
United States District Court, D. Connecticut,
July 29, 1970.

A probationary teacher brought suit under the federal civil rights act to restrain the Hartford board of education from refusing to renew his contract for the next school year. The teacher alleged that the failure to renew his contract was unwarranted and was in retaliation for certain things he said at a public meeting. At the meeting in question the teacher had identified the director of secondary education by name and called him a liar, questioned his honesty and competency, and challenged the integrity of the entire administrative staff of the board of education. Prior to the teacher's remarks at the meeting, the chairman of the meeting had requested that there be no mention of personalities in any of the remarks.

Following the charges made by the teacher, an investigation revealed no tangible evidence to support the charges made by the teacher against the director of secondary education and his staff. The teacher was given an opportunity to apologize, but he declined to do so. Thereafter, the teacher was notified that his contract would not be renewed for the following school year. Pursuant to the grievance procedure in the collective bargaining agreement the teacher was given a hearing *de novo* at which he was represented by counsel and given the opportunity to present evidence. The grievance panel, before which the hearing was held, affirmed the decision of the board not to renew the teacher's contract. This court action followed. The teacher claimed he was denied employment for having exercised his constitutional right of freedom of speech, and that the Hartford tenure law which permits nonrenewal of a contract for reasons of misconduct is void for vagueness. In reaching the decision the court stated that a teacher may not be dismissed or denied re-employment for conduct amounting to free speech. Thus, the court said,if the teacher's alleged misconduct was making a public statement critical of the director of secondary education and other administrators, even if made in language likely to be offensive or inimical toward them, the court would nevertheless protect his right to speak his criticism freely. Continuing, the court said that "in the absence of proof that a teacher knowingly or recklessly engaged in falsehood concerning other school personnel, the school board, or the school system, relating to official conduct, wide latitude must be allowed to protect and encourage a free and open public discussion and interchange on matters which belong to the public domain." In this instance, however, the court found that the teacher had transgressed the protected limits afforded him under law and his statements went beyond legitimate criticism protected by the First Amendment. For contrary to the expressed policy of the board at the open meeting not to engage in personalities, the teacher's comments were violently abusive and personally defamatory toward his administrative supervisor. The court also found that the abusive language was of such a nature as to destroy any likelihood of a future amiable relationship between the

teacher and the administrative staff. Therefore, to order the school board to rehire the teacher under the supervisor "would invite friction and destroy staff morale." Accordingly the injunction requested by the teacher was denied.

The court also found that the Hartford teacher tenure law, pursuant to which the status of the teacher was governed, did not deny him due process of law on its face or as applied. The First Amendment does not protect the teacher's statements under the circumstances, and the totality of his over-all attitude, the court held, justified the board's action in refusing to rehire him.

Florida

Thaw v. Board of Public Instruction of Dade County, Florida
432 F.2d 98
United States Court of Appeals, Fifth Circuit, September 22, 1970; rehearing denied and rehearing en banc denied October 26, 1970.

A probationary teacher appealed the lower court decision dismissing his complaint. During the teacher's third year in the Dade County school system his principal recommended to the school board that his contract not be renewed. This denied him tenure. In the district court and on appeal the teacher sought to require the board to grant him a hearing on the nonrenewal of his contract. The appellate court noted that under previous judicial decisions of the Fifth Circuit school boards are required to grant teachers a hearing on nonrenewal of their contracts in two types of cases. The first is when the teacher has tenure or an expectency of continued employment. In this instance the teacher offered no proof of any reasonable expectation of re-employment, and he clearly did not have tenure. Hence he was not entitled to a hearing. The second type of case in which school boards must grant teachers a hearing is when the teacher asserts that he has been dismissed for constitutionally impermissible reasons such as race, religion, or the exercise of a First Amendment right. In this instance the teacher made no allegation that any constitutional right was violated. He alleged that he was dismissed because of a personal disagreement with the principal, and the record disclosed that the principal recommended nonretention because of the teacher's unsatisfactory performance of his duties. Neither of these reasons, the court said, fell within the ambit of constitutionally protected activities.

The teacher argued that he should be granted a hearing to assure that the "real basis for separation is [not] bottomed on conduct that is or should be constitutionally protected." The appellate court did not agree, stating that the teacher would surely know if he had been engaging in protected activity that would irritate school authorities. The court said:"It would be too much to ask the school board to hold a hearing every time it determines not to renew the contract of a probationary teacher, or even every time a terminated teacher requests a hearing without alleging unconstitutional action." The decision of the district court was therefore affirmed.

Illinois

Robbins v. Board of Education of Argo Community High School District 217, Cook County
313 F.Supp. 642
United States District Court, N.D. Illinois, E.D., May 25, 1970.

A black probationary teacher of English whose contract was not renewed brought suit under the federal civil rights act charging that her termination was for her civil rights activities. She sought reinstatement and damages against the members of the board of education and the superintendent. The teacher had been employed for the last half of the 1967-68 school year and was re-employed for the 1968-69 school year. Shortly after the start of the 1968-69 school year racial tensions in the school resulted in student walkouts, fights, and the closing of the high school. The teacher was instrumental in obtaining an agreement between the administration and the black students, easing the situation. The following month there was trouble again, and the teacher met with the students and suggested that their parents meet to discuss the issue. When the parents met and formed a black parents committee, the teacher was selected as a member. She remained active in the group and also formed a Black Literature Club. The teacher alleged that these activities and the school administration's hostility to the exercise of First Amendment rights were the reasons for her discharge.

The school district countered by establishing that, contrary to school regulations, the teacher was tardy on 140 of the 167 days in which she was in attendance, that on one occasion she left school during the day to visit a student in jail without signing out, and that she held a party in her classroom without permission. It was also established that among other infractions, the teacher was derelict in maintaining and turning in lesson plans and that she frequently failed to perform corridor duty as required. It was for these reasons that her contract was not renewed.

The teacher attempted to dilute the force of this evidence with proof that she rarely received written reprimands for these infractions, but the court found it proven that she was orally reprimanded for several incidents and received written reprimands for others.

The teacher also contended that her performance as a teacher was no less adequate after the black parents committee meeting than before. This circumstance was significant if the teacher could prove, as she alleged, that the principal had told the meeting of black parents committee that she was an excellent teacher. Based on its observation of witnesses and the minutes taken at that meeting, the court concluded that no such statement had been made.

Lastly, the teacher contended that her employment was terminated because of the school administration's "animus" to the exercise of First Amendment rights. However, the court found the evidence offered by the teacher to support this contention insubstantial. The court found no direct evidence that any members of the administration disapproved of the teacher's activities with black parents or students. Furthermore, the court found that the

principal was attempting to integrate the faculty at the time the teacher was hired and that the principal asked her advice on a number of issues involving black students. According to the court, the evidence clearly showed that it was the teacher's differences with the principal as to the need to comply with school administrative regulations and not her civil rights activities that led to the decision to terminate her employment.

The court concluded that the teacher had failed to satisfy her burden of proof that her dismissal was for her exercise of First Amendment rights of speech, assembly, and petition, or her Fourteenth Amendment rights to due process and equal protection of the laws.

Since no violation of the teacher's constitutional rights had been shown, she was not entitled to reinstatement and damages.

Shirck v. Thomas
315 F.Supp. 1124
United States District Court, S.D. Illinois, N.D.,
July 28, 1970.

A dismissed teacher brought suit against the school board under the federal civil rights act. The teacher was employed by the Pekin Community High School for the 1967-68 and 1968-69 school years. Illinois statutes provide for tenure at the completion of a two-year probationary period unless written notice of dismissal with reasons is given at least 60 days prior to the end of the school year. In full compliance therewith, the teacher was notified by letter dated April 1, 1969, that the board of education had voted not to renew her contract for the next school year because of her failure to coordinate her teaching with other teachers to the detriment of the students.

The court said that for the teacher to recover under the civil rights act, she must show that the school board had deprived her of a constitutional right "under color of law." The court held that the teacher had not met this initial burden of proof. The court said further that there is no consititutional right to initial public employment or to permanent employment while the employment is probationary. The court said that "probationary employment is specifically provided for a qualifying trial period in which preliminary scrutiny must be allowed to determine the person's fitness for permanent appointment."

The court held that the complaint of the probationary teacher in this instance, stating only that she was dismissed upon proper notice and in conformity with the tenure law, failed to state a cause of action upon which relief might be granted. Accordingly, the complaint was dismissed.

Indiana

Knarr v. Board of School Trustees of Griffith, Indiana
317 F.Supp. 832
United States District Court, N.D. Indiana, Hammond Division, September 25, 1970.

A high-school teacher whose contract was not renewed for the sixth year brought suit under the federal civil rights act against the school district, charging that the failure to renew deprived him of his constitutional rights. The failure to renew his contract also denied the teacher tenure since state law provided for a five-year probationary period with tenure on appointment for the sixth year.

The court noted at the outset that a court will not substitute its judgment for that of the school board, but a court must look to see if a board has acted lawfully. The teacher here contended that the failure to rehire him was in retribution for his union activities, and, therefore, deprived him of his freedom of speech and association guaranteed by the First Amendment. The evidence indicated that the teacher had been very active in union affairs. However, on the evidence presented, the court was convinced that the school administration had no bias against the union in general, or this teacher in particular because of his union activity. It was noted that several other active union members had been granted tenure or given promotions.

The court held that the teacher had failed to meet his burden of proof that the actions of the school board had deprived him of his constitutional rights. The court said that it was, therefore, unnecessary for it to examine the reasons given by the board to the teacher. Nevertheless, the court did review some of the evidence to make it clear that there was a substantial basis for the decision not to renew the teacher's contract. The court found that the five reasons given by the board were all supported by the evidence and all related directly to the teacher's performance in the classroom and/or the smooth functioning of the school system.

The court concluded that the decision of the school board not to place the teacher on tenure status was based on a reasonable appraisal of the teacher's abilities and shortcomings. The court found no credible evidence to support the contention that the board acted with a bias toward the union or an intent to deprive the teacher of his constitutional rights. The complaint of the teacher was therefore dismissed.

Roberts v. Lake Central School Corporation
317 F.Supp. 63
United States District Court, N.D. Indiana,
Hammond Division, June 11, 1970.

A nontenure teacher whose contract was not renewed brought suit under the federal civil rights act, seeking an order requiring the school officials to offer him a contract for the next school year. Prior to his dismissal the teacher was employed by the board for two years and in the last year he served as president of the local teachers association, and as a member of the negotiating team. At a meeting of the association the teacher told other teachers that the administration was trying to buy them off with little items at the expense of big ones. This statement came to the attention of his principal who called the teacher into his office, told him that the statement reflected directly on the principal and was untrue, and demanded an apology. The teacher asserted that the statement was his opinion and that, right or wrong, he had a right to say it.

The principal then reported the matter to the superintendent who called the teacher in and asked for a retraction

of the statement. The teacher again refused. The superintendent then recommended to the school board that the teacher's contract not be renewed for the 1970-71 school year. In the letter notifying the teacher that he would not be rehired the reason given was that he had "exhibited a general attitude which discloses a refusal to cooperate with school authorities on matters relating to school administration."

The court found that it made no difference that the teacher had not attained tenure since he had a remedy if his contract was not renewed because of his exercise of a constitutional right. The court then proceeded to weigh the interest of the teacher to comment on issues of concern to him and the interests of the state as an employer in promoting the efficiency of the schools. In balancing these competing interests the court found that the teacher's capability in the classroom was not in question, and admittedly he was a good teacher and that the only reason for his nonretention was the one statement. Since the teacher was the president of the teachers association and the statement was made at a meeting of teachers concerning the subject matter of negotiations then going on, the court did not find it extraordinary that the teacher would caution the people that he represented against being "bought off" by concessions by the administration on small items at the expense of larger ones. Nor did the court believe that the statement was so critical of the school administration that it could be expected to have a serious disruptive effect on the operation of the schools.

The court was of the opinion that the comment of the teacher did not threaten the efficient operation of the schools. If a board were permitted to refuse to renew the contract of a teacher solely because he made statements critical of the school administration, the court said, there would be a serious impairment in the freedom of teachers to speak out on issues concerning them. On the facts presented, the court held that the decision of the school board not to renew the teacher's contract was unjustified and constitutionally impermissible. The court ordered the school board to renew the teacher's contract for the 1970-71 school year.

Massachusetts

DeCanio v. School Committee of Boston
260 N.E.2d 676
Supreme Judicial Court of Massachusetts, Suffolk,
July 3, 1970

Appeal dismissed sub. nom. *Fenton v. Boston School Committee*, 91 S. Ct. 925, March 1, 1971.

Six nontenure teachers who had been dismissed by the Boston school committee brought suit seeking reinstatement. The lower court denied relief and the teachers appealed. These teachers had been assigned to teach at a predominantly black elementary school which had become the focus of a controversy over community control. On the second day of classes of the 1968-69 school year, the six teachers had left the building and had joined the pupils in a "liberation" school and conducted their classes there. The following day they were notified of a seven-day suspension because of their "unauthorized absence." Later that day they were informed that a hearing would be held on their suspension, but no additional notice of charges against them was given. At the hearing, the request of the teachers' counsel for a continuance and a public hearing was denied, and the contracts of the six teachers were terminated for unbecoming conduct. The six were notified of their right to a closed hearing which they declined to attend. Instead they instituted suit seeking reinstatement. The lower court denied this relief, ruling that they had no statutory or constitutional right to a hearing and that they were properly and lawfully dismissed.

The teachers contended that under the tenure law they were entitled to a hearing prior to their suspension or discharge since nontenure teachers must be notified in writing by April 15, if they are not to be employed for the next school year. All six teachers had taught the previous year, and none had been notified of non-re-employment.

The court did not agree with the teachers' interpretation of the tenure law. The court held that the statutory provisions quoted by the teachers meant only that the school district did not have to notify every nontenure teacher of reappointment but the statute did not confer any additional rights on the nontenure teacher nor did it abridge any power of the school committee to dismiss or suspend a nontenure teacher during the school year.

The teachers' principal contention was that the lack of notice of charges against them and the lack of a hearing deprived them of due process and equal protection of the laws. They cited cases from other jurisdictions to support this argument. The Massachusetts court disagreed with the federal court holding in *Roth* and *Gouge* (see pages 46 and 45) that public-school teachers and college professors whether or not on tenure could not constitutionally be dismissed without notification of reasons for the impending dismissal and without the offer of a hearing. Instead, the Massachusetts court said that it chose to follow "the greater weight of authority" noting that "most of the cases in which the question [of the dismissal of a nontenure teacher] has been considered have concluded that in the absence of a statute to the contrary a probationary teacher may be dismissed without a hearing." The court concluded that the tenure law which provided for a hearing for tenure teachers but not for nontenure teachers violated no federal or state constitutional provision, and, therefore, the teachers were not denied due process or equal protection of the laws.

The dismissals of the teachers were upheld as lawful and reinstatement was denied.

NOTE: The Supreme Court of the United States declined to hear an appeal from this decision.

Michigan

Munro v. Elk Rapids Schools
178 N.W.2d 450
Supreme Court of Michigan,
July 17, 1970.

(See *Teacher's Day in Court: Review of 1969*, p. 27.)

A teacher who had completed the two-year probationary period brought action for a writ to compel the

school board to rehire him. The trial court and the lower appellate court denied the writ and the teacher appealed.

The teacher was employed as a probationary teacher for two years and received satisfactory ratings. The board, however, declined to re-employ him for the third year. The teacher contended that once a school board had rated a teacher satisfactory for two years it must rehire him and that the school board's letter stating that he would not be rehired did not comply with the Michigan Teachers' Tenure Law in that he was not sent a "definite written statement as to whether or not his work has been satisfactory."

The sections of the Michigan tenure law relied upon by the teacher provide in part: (a) At least 60 days prior to the close of school each probationary teacher shall be rated satisfactory or unsatisfactory. Any probationary teacher shall be employed for the ensuing year unless notified in writing at least 60 days prior to the close of the school year. (b) After satisfactory completion of the probationary period, a teacher shall be employed continuously by the board.

The position of the school board was that the statutes require two separate acts. First, the teacher must be rated satisfactory. Second, the board must decide to rehire him. If the board decides not to re-employ the teacher, its only duty is to notify him 60 days prior to the end of the school year. The school board argued that a teacher may be rated satisfactory, and yet the board may not, for some reason, wish or need to hire him. This being so, the statute did not impose a duty on the board to hire the teacher.

The state supreme court agreed with the trial court holding that the interpretation of the statutes by the school board was the correct one and the board's notification of the teacher that he would not be re-employed was sufficient under the law.

The state supreme court also found no denial of due process because the probationary teacher was not notified of the reasons for nonrenewal of his contract. After an examination of numerous cases involving probationary teachers in other jurisdictions, the court found that none of them would justify the conclusion that the Michigan Teachers' Tenure Act violates the federal or state constitution.

Concluding that the teacher had not been denied any statutory or constitutional rights, the court refused to reverse the decision of the lower court and refused to order that the teacher be reinstated and be awarded damages.

Mississippi

Lucas v. Chapman
430 F.2d 945
United States Court of Appeals, Fifth Circuit,
August 6, 1970.

A nontenure teacher who had been employed by the school system for over 11 years was terminated by refusal to renew his one-year contract. The teacher brought suit seeking reinstatement or damages, alleging that his contract was not renewed because of his exercise of his right of free speech and his political and civil rights activities. He also alleged that his right to procedural due process had been violated. Without passing on the due process claim, the district court denied relief and the teacher appealed.

The appellate court found that the case was controlled by *Ferguson v. Thomas*, (see page 43 of this report). While the teacher did not have tenure, his long-term employment was sufficient to give him the expectancy of re-employment that constituted a protectible interest. The appellate court found that his termination did not meet the minimal standards of due process since he was told at a board meeting of the board's decision, was not given specific reasons for his termination, nor was he advised of the names of those who had complained about remarks critical of the board and other faculty members he had made at a PTA meeting. This last factor was of particular importance, the court said, since the superintendent had relied on these statements in recommending that the teacher not be rehired, and the statements were hearsay and subjective reactions of those protesting the remarks. Further, the teacher had received no hearing attaining the most minimal due process standards.

In accord with the *Ferguson* and other decisions of the Fifth Circuit, this case was remanded to the district court with instructions that it be remanded to the school board for compliance with minimum standards of procedural due process. The appellate court made it clear that it was not holding that a hearing is mandatory in every event. Where, however, the asserted reason for termination involves possible collision with a teacher's First Amendment rights, a hearing must be granted if desired by the teacher. But where the only matter in issue is a difference in view over the school board's exercise of judgment in a nonconstitutional matter, the court said, a hearing is not required. If the school board asserts a nonconstitutional reason and the teacher asserts that the real reason does involve a constitutional right, the teacher must be afforded a hearing. Also, even if the reason for termination is in the area of nonconstitutional reasons, the board's decision must not be wholly unsupported by evidence else it would be so arbitrary as to be a constitutional violation.

Missouri

Williams v. School District of Springfield R-12
447 S.W.2d 256
Supreme Court of Missouri, Division No. 2,
October 13, 1969. Motion for rehearing or for transfer to Court en Banc denied, December 8, 1969.

A high-school Latin teacher appealed from the decision of the trial court dismissing her complaint relating to her non-re-employment by the school district. The teacher had been employed on a one-year contract for the 1966-67 school year when she was orally advised by a member of the school administration that, as recommended, she would not be re-employed for the next school year. The teacher was told that she could avoid embarrassment by resigning, but if she wished, she could appear before the board of education that evening. The teacher did appear with counsel and requested a written transcript of the meeting, written reasons for termination of her contract, a full, fair

and timely hearing, and a postponement of the decision until such time as the teacher was apprised of the charges against her and could present a defense. The school board denied all the requests and adopted a motion that the teacher "be not reemployed as a teacher" in the school district.

The first count in the teacher's complaint was that her contract was breached because of the manner in which she was dismissed. Although the complaint referred to termination of the teacher's contract, the court said that her contract was not terminated; rather, she was given written notice that she would not be re-employed. Under Missouri law a school board must notify a teacher by April 15 concerning his re-employment or lack thereof, and this the school board had done. The school district in this case was not a tenure district, and the court could find no statutory or case law in the state to require the school board to provide a teacher whose contract was not renewed with written reasons or a hearing.

The remaining question before the court was whether the dismissal procedures of the school district that were incorporated into the teacher's contract applied to non-re-employment, as the teacher claimed, so as to entitle her to a written statement of reasons for not being rehired and a hearing. The court noted that the procedures referred to termination or suspension of a teacher's contract. The court said that in this instance the teacher was not re-employed and that this was not a termination or a dismissal under the school district procedures. Accordingly, the court ruled that the procedures did not apply to this teacher and that the action of the trial court in dismissing this count of the complaint was correct.

In the second portion of the complaint the teacher alleged that she was terminated or denied re-employment because of her exercise of her right to free speech. In substance she charged that she gave a speech before the Classical Association that was subsequently reprinted in the association journal. The speech included "an evaluation of the comparative emphasis placed on athletics as opposed to scholarly pursuits in the public schools." It was alleged that the superintendent informed the teacher that he found the speech *offensive* and that he would recommend that she not be re-employed. The court observed that although a school board has an absolute right to re-employ or decline to re-employ any teacher, the failure to re-employ may not be on impermissible constitutional grounds. Without ruling on the merits of the teacher's allegation, that her right to free speech was violated, the appellate court held that the teacher had presented a claim upon which relief could be granted and that cause of action should not have been dismissed by the trial court. In so holding, the court emphasized that it in no way means to change the nontenure status of teachers but it was saying that "a school board's right to rehire a teacher must not be on grounds that are violative of a teachers constitutional right."

The remaining three counts of the teacher's complaint were against the superintendent for malfeasance in performance of ministerial duties in terminating her contract and for slander, and against the board of education for denying her due process during and after termination of her employment. The court upheld the dismissal of all three counts. The court said that the conduct of the superintendent in not giving the teacher reasons for the nonrenewal of contract did not violate any duty owed to the teacher. Other charges against the superintendent by the teacher, the court said, were mere conclusions and not substantiated by the complaint. With regard to the charge of slander, the court held that the statements made by the superintendent regarding the competency of the teacher were absolutely privileged insofar as they were made at the meeting before the board of education at the request of the teacher. The dismissal of the last count of the complaint against the board regarding the denial of due process was affirmed because, as the court had previously stated, Missouri law did not require that the teacher be given a statement of reasons or a hearing on her dismissal.

The lower court's dismissal of the teacher's complaint was affirmed except for that count of the complaint which alleged that the discharge was in violation of the teacher's First Amendment right to free sppech. The case was remanded for a trial on the merits of that claim only.

New York

Albaum v. Carey
310 F.Supp. 594
United States District Court, E.D. New York,
December 18, 1969.

(See *Teacher's Day in Court: Review of 1968*, p. 31.)

Pursuant to the previous decision in this case, a three-judge federal court was convened to hear the allegations of a teacher who had been denied tenure, that the New York teacher tenure law was unconstitutional. The teacher brought suit against the school superintendent charging that the denial of tenure was based on his union activities in violation of the Constitution and that the state law giving the superintendent virtual unfettered discretion in granting tenure was unconstitutional. He also sought judgment for damages because of the denial of tenure.

The language that the teacher sought to have declared invalid provided that teachers shall hold their respective positions during good behavior and competent and efficient service. In the initial proceedings, the single-judge court felt that a previous decision by the state court gave substance to the teacher's contention. However, that decision was subsequently reversed by the highest state court on remand from the Supreme Court of the United States. Accordingly, the three-judge court dismissed the first cause of action.

The second cause of action was for damages for the alleged illegal deprivation of tenure. The three-judge court held that the teacher was not denied tenure because of the exercise of any of his constitutional or statutory rights, but rather on account of difficulties he had in developing new programs and carrying out school policies because he had substantial and continuing disagreement with administrators and supervisors. The court found that denial of tenure was caused by a desire on the part of the school superintendent "to eliminate from the school system a nettle-

some individual who created annoying administrative problems," and not because of his connection with labor negotiations on behalf of the local teachers association. The second cause of action was also dismissed.

Board of Education, Central School District No. 1 v. Helsby
314 N.Y.S.2d 944
Supreme Court of New York, Erie County,
October 22, 1970.

(See page 57.)

Canty v. Board of Education, City of New York
312 F.Supp. 254
United States District Court, S.D. New York,
May 4, 1970.

A dismissed substitute teacher brought suit against the board of education, seeking a preliminary injunction for immediate reinstatement. The teacher claimed that his dismissal was arbitrary, capricious, and hence violated his right to due process.

Prior to the teacher's dismissal there had been complaints from parents claiming that their children had been held in class after hours and that one young girl had been physically abused. On the day that the teacher was dismissed, some of the pupils in his class brought the girl who had previously complained about physical abuse to the principal's office in tears. She claimed that the teacher had pushed her and injured her. The principal went to the teacher's class, found it in total disorder, and dismissed the teacher. After being informed of the specific reasons for his dismissal the teacher instituted grievance proceedings. At that hearing the teacher claimed that he should not have been immediately dismissed because the situation was not an "emergency." The principal stated that he did consider the situation an emergency and in a memorandum mailed thereafter to the teacher, the principal summarized the evidence and decided that the claim of the teacher of "no emergency" was not justified. The teacher was also informed that he had a right of appeal to the deputy superintendent. At the hearing held pursuant to that appeal the dismissal was upheld because of the evidence that the teacher had difficulty in maintaining class control. But 10 days' additional salary was granted because the deputy superintendent did not completely agree that an emergency existed.

Considering the reasons for the teacher's dismissal, the court found it highly unlikely that the teacher could prove that his dismissal "was so irrational and so lacking in evidentiary support as to be arbitrary and capricious." Since the teacher had failed to meet his burden of establishing a likelihood of success on the merits, the court denied his motion for a preliminary injunction without finding it necessary to balance the harm inflicted on the teacher by the denial of the injunction against the harm that would be inflicted on the school board and on the public by granting the motion.

Helsby v. Board of Education of Central School District No. 2 of the Town of Claverack
312 N.Y.S.2d 355
Supreme Court of New York, Appellate Division,
Third Department, May 27, 1970.

(See page 59.)

Pennsylvania

Appeal of Spano
267 A.2d 848
Supreme Court of Pennsylvania, July 2, 1970.

A discharged employee and the school board appealed from a decision of the state superintendent of public instruction which held that the employee was a professional employee, and at the same time sustained the school board's action of dismissal. The trial court reversed the order and directed the school board to reinstate the teacher as a professional employee. The school board appealed further.

The employee had been hired in the summer of 1966 for the position of curriculum coordinator. Shortly after school began, difficulties arose and the teacher was asked to but refused to resign. In April 1967, she was suspended by the superintendent. In September 1967, charges of incompetency and willful violation of the school laws were brought against the employee. Hearings on the dismissal were concluded in April 1968, at which time the employee was discharged. She then appealed to the state superintendent who found that she was a professional employee within the meaning of the school code, dismissed the incompetency charges, and sustained the school-board action on the charge of willful and persistent violation of the school laws. On appeal, the trial court agreed with the employee that she had not been given a fair hearing and ordered the school board to reinstate her as a professional employee.

The first question on the present appeal was whether the employee was a professional employee within the meaning of the school code because if she was not, she had no standing to appeal to the state superintendent and to the trial court. The school board argued that the employee was not a professional employee since the position of curriculum coordinator was a nonmandated position which was not encompassed in the definition of professional employee in the school code. No one, however, denied that the employee was certified as a teacher, which term was defined in the law as including "all professional employees...who devote more than fifty per centum (50%) of their time, or more, to teaching or other direct educational activities." Since the employee did devote more than 50 percent of her time to educational activities, the appellate court held that she was a teacher and a professional employee within the meaning of the school code. As such she was entitled to appeal to the state superintendent and to the courts. Additionally, the appellate court found that the contract between the employee and the school district stated that she was employed to serve as a professional employee of the school district.

The next question involved the lower court finding that the employee had not received a fair hearing before the school board and that the state superintendent abused his discretion in finding to the contrary. The court noted that tenure law provided an employee with the opportunity for a *de novo* hearing before the court as part of the appeal from the decision of the state school superintendent, so that he can have his case retried in a forum where the school board plays only the role of prosecutor and not that of judge also. The court held that his opportunity for a *de novo* hearing before the court must be taken as the exclusive remedy when the employee alleges that he was denied a fair hearing before the school board. Failure to do so deprives him of ever asserting the claim again.

However, since this principle was announced for the first time in this opinion, the court applied it prospectively only and remanded this case to the court below to permit the employee to request a hearing *de novo* on the case. If the teacher chose not to make this request, the court was to review the determination of the state superintendent on the basis of the record to see if there was an abuse of discretion or an error of law on his part.

Mullen v. Board of School Directors of DuBois Area School District
259 A.2d 877
Supreme Court of Pennsylvania, December 4, 1969.

A probationary teacher who had been abruptly dismissed from his position brought an action in mandamus seeking reinstatement and damages. In defense, the board alleged that the teacher's performance was unsatisfactory and that he had no valid contract with the board. The trial court entered a judgment in favor of the teacher and the board appealed.

The evidence showed that the teacher had been rated five times. On four of these occasions his performance had been rated satisfactory. The fifth rating, four days prior to his dismissal, was the only unsatisfactory one. The teacher's ability came into question only after he became the "building representative" for the local education association. The court found that the evidence supported the lower court's determination that the teacher's dismissal "was the result of an arbitrary and capricious exercise of the discretionary power vested in his employers."

The second issue in the case concerned the validity of the contract between the teacher and the board. Pennsylvania law requires that the hiring of a professional employee be effected by an affirmative vote of a majority of the members of the hiring board duly recorded in its minutes. It appeared that although the teacher's contract was signed by the secretary and the president of the board, it was not recorded in the minutes. The board claimed that because there was no recorded vote, there was no valid and enforceable employment contract. The court agreed with the finding of the trial court that the board did approve the appointment of the teacher. It agreed also with the words of the trial court that it would be "not only unconscionable but untenable at law, to maintain that the requirements for a valid and enforceable contract were not met in this case." Since the presence or absence of a formal vote recorded in the minutes was entirely within the control of the board, the consequences of noncompliance with statute rested on the board, not on the teacher.

The court held further that mandamus was the proper action and affirmed the lower court's holding that the teacher was entitled to reinstatement, lost salary together with any increments to which he would have been entitled, and certification, which would result in his becoming a permanent professional employee.

Texas

Ferguson v. Thomas
430 F.2d 852
United States Court of Appeals, Fifth Circuit,
June 23, 1970; rehearing denied August 13, 1970.

A dismissed college instructor brought suit against officials of Prairie View A. & M. College charging that his employment was terminated and his off-campus residence hall was not approved for student use because he exercised his First Amendment rights of expression and association. He also alleged that the procedures followed in the termination of his services denied him due process of law. The district court found no violation of the teacher's rights and dismissed the action. This appeal followed.

The professor had been employed by the college since 1958, first as head of the department of Business Administration and then as a full professor. No instructor at the college had tenure, and contracts were made annually. Under the applicable rules and regulations, dismissal was for cause, but no mention was made of administrative determinations relative to nonrenewal of contract. During the 1966-67 school year, disagreements and disputes arose between the college administration and the instructor. These culminated when the professor took one of his classes from the classroom to the auditorium to enable the students to discuss campus grievances with several members of a teacher-student organization. The president of the college then called the professor into his office and in the presence of other administrative and faculty personnel and two students presented him with a document containing 15 "guidelines" relating to his performance as an instructor. A 16th point in the guidelines placed the instructor on temporary probation for the balance of his contract period. The guidelines were not applicable to any other instructor at the college.

On July 15, 1967, the dean of the college notified the professor that his services would be terminated beginning September 1, 1967. When the professor challenged the correctness of this unreasoned notice, it was discovered that termination without cause was contrary to the prevailing practice in the state university system. The professor was then sent a detailed letter stating these three reasons for termination: a dispute between the professor and the head of the Business Administration Department relative to making that department into a separate school at the college, the use of classroom periods for discussing with students matters unrelated to the material required to be taught that resulted in inferior instruction, and limitations of the professor's health. The professor then requested a

hearing before the board of directors of the A. & M. University System and asked that the head of the department and the college dean be present. The board agreed to hear the professor, but said that it would not hear from the other two until after the professor had presented his case. At the hearing the college president outlined the reasons why the professor's contract was not renewed, and the professor replied to the charges. Without ever hearing from the dean and the department head, the board sent a letter to the professor, stating that it considered this an administrative matter to be handled by the college president and the president of the university system. The professor was not re-employed.

The trial court found that the professor was not on tenure, that the 15-point guideline put him on notice that his activities were not in keeping with college policy, that the professor was given the opportunity to speak at the meeting where the guidelines were presented, that he had received the equivalent of a hearing, and that he had not been deprived of any constitutional right because the procedures applied to him met the fundamental rudiments of fair play.

At the outset, the appellate court set forth the minimum standards of due process applicable to teachers who have an "expectancy of re-employment." These requirements include notice of the cause or causes for termination in sufficient detail to fairly enable the teacher to show any error that may exist, to advise the teacher of the names and nature of the testimony of witnesses against him and to accord the teacher a meaningful opportunity to be heard in his own defense, and a hearing before a tribunal that has academic expertise and impartiality toward the charges.

In applying these principles to the facts in the instant case, the appellate court said that the teacher may have been denied due process in the procedures before the college officials, but that in the trial court he was given an opportunity to call witnesses and cross-examine them relative to the procedures followed, as well as the merits of, terminating his services. The witnesses that the professor wished the board to hear were examined in the hearing before the trial court. Because of the hearing in the court below, the appellate court affirmed the dismissal of the teacher. However, the court said that "the proper administration of justice requires that we caution against any similar court procedures which would allow the full development of the merits of a case of this type as a matter of course. To do so routinely in every such case constitutes both an intrusion into the internal affairs of state educational institutions and an unwise burden on judicial administration of the courts." The appellate court believed that school-constituted review bodies were the proper forum for such matters and not the federal courts. Federal review should be limited to the question of whether federal rights have been violated by the procedure utilized. If no such rights were violated, the court should look at the record developed by the school to determine whether there was substantial evidence to support the decision. The court said that in cases where the teacher challenges his termination on grounds of infringement of his constitutional rights, and it is unclear whether the school had a valid reason for its action, a balance should be struck between the interests of the teacher as a citizen and the interests of the state as an employer. In this instance the appellate court held that the proof before the district court showed that the professor exercised his right of free speech and association to such an extent as to seriously impair his effectiveness as an instructor.

With regard to the charge of the professor that his off-campus housing had not been approved for student use in retaliation against him, the appellate court held that it was error for the district court not to permit full development of the evidence because the complaint failed to join the dean of men as a party defendant. The case was remanded for correction of the procedural error and full taking of evidence to determine if the college had adequate reason for not approving the housing.

The determination of the district court was upheld as it related to the dismissal of the professor, and the matter was remanded on the housing issue.

Sindermann v. Perry
430 F.2d 939
United States Court of Appeals, Fifth Circuit,
August 10, 1970; rehearing denied September 9, 1970.
Certiorari granted, 39 U.S. Law Week 3548, June 14, 1971.

A teacher at Odessa Junior College whose contract was not renewed brought suit against college officials. He charged that the nonrenewal was because of his exercise of his First and Fourteenth Amendment rights of expression, association, and petition, and alleged violations of due process in connection with the refusal to renew his contract. The district court granted summary judgment in favor of the college, and the teacher appealed. The lower court had found that the contract rights between the parties were clear. In the interim the appellate court decided the case of *Pred v. Board of Public Instruction* (415 F.2d 851) which classified the rights of persons circumstanced such as this teacher as constitutional rather than contractual.

The teacher had joined the faculty in September 1965 and through a series of one-year contracts remained until the 1968-69 school year. In May 1969, he was notified that this contract would not be renewed for the next school year. Sixteen days later this suit was filed, and at the same time the teacher requested the college authorities to give him a hearing. Prior to the official notice of nonrenewal, the college had issued a press release outlining the deterioration of its relationship with the teacher. The main difficulty appeared to be the teacher's activities as president of the Texas Junior College Teachers Association and his insistence on being absent from his classroom duties to testify before state legislative committees on a bill relating to academic freedom and tenure after having been denied permission to be absent. Additionally the teacher was part of a group seeking to elevate the college to a four-year status which was officially opposed by the board of regents.

The teacher alleged that his contract was not renewed in retaliation for his expressions of opinion, that he had not been offered an impartial hearing, that the action taken

against him had a "chilling" effect on other faculty members at the college, and that he had been damaged in his professional reputation and standing. He sought compensatory and punitive damages and a declaratory judgment that the action of the regents violated his constitutional rights and that he was entitled to a hearing and a mandatory injunction requiring his reinstatement.

The appellate court held that under the *Pred* decision summary judgment should not have been granted. Quoting from that decision the court said in part that "what is at stake is the vindication of constitutional rights—the right not to be punished by the State or to suffer retaliation at its hand because a public employee persists in the exercise of First Amendment rights." The appellate court said that the controlling effect of *Pred* was in no way lessened by the fact that the teacher had asked for and been denied permission to be absent from his duties. The question still was whether the college refused to renew his contract as a reprisal for the exercise of his rights. The court noted that summary judgment was improper because the basic facts and the material inferences to be drawn therefrom were in dispute. The court explicitly noted that it was dealing only with procedure and not the merits of the claim.

Since the case was being remanded, the appellate court deemed it appropriate to comment on the teacher's contention that he was denied due process when the college simply notified him that he would not be rehired and failing or refusing to give him a hearing. The court held that if it were determined that the teacher had an expectancy of re-employment, the procedures outlined in *Ferguson v. Thomas* (see page of this report) would apply. If the lower court determined that the teacher did not have this expectancy, the teacher must bear the burden both of initiating the proceedings and of proving that a wrong had been done by the college in not rehiring him. In such an instance, the court said, the teacher should notify the college that he is asserting a claim, set it forth in sufficient detail to fairly enable the college to show any error that may exist, and request a hearing. Such a hearing should be before a tribunal having academic expertise and impartiality, and must include the right to present witnesses and to cross-examine; and a transcript should be made.

The court concluded that except in those cases where the teacher or the institution refuses to follow the suggested procedures, a court should not act until the matter is made ripe for adjudication. The summary judgment of the district court was reversed, and the matter was remanded to that court for a hearing on the merits.

NOTE: The Supreme Court of the United States has agreed to hear an appeal in this case.

West Virginia

State ex rel. Kondos v. West Virginia Board of Regents
175 S.E.2d 165
Supreme Court of Appeals of West Virginia,
June 16, 1970.

An assistant football coach at a state university sought a writ of mandamus to compel the board of regents to reinstate him in his contract "until such time as [the board of regents] act in accordance with the laws of this state." The coach had a contract for one year beginning July 1, 1969. On August 1, 1969, he was notified by the president of the university that he was recommending to the board of regents that the coach's contract be terminated September 30, 1969, because he had performed his duties in an incompetent manner. The coach was also informed that he could appeal to a faculty committee appointed by the University Council and if he desired he could appeal further to the board of regents. The coach alleged that an appeal to a faculty committee would be a useless act and waived that right. The coach did appeal the termination of his contract to the board of regents which affirmed the decision of the university president and dismissed the appeal.

In his suit the coach relied on certain statutory provisions of state code, contending that he was denied due process because he was not afforded a hearing as provided for in the statute. The board of regents took the position that the coach was not legally entitled to any hearing prior to his dismissal and also that he was accorded an opportunity to be heard which he waived.

The court held that the code provision cited by the coach providing for a hearing prior to dismissal applied to personnel employed by a county board of education and not to university employees. In addition the court noted that a separate article of the state code applied to employees of the board of regents and that this article contained no provision relating to tenure of faculty and college personnel or to the manner in which they are to be suspended or discharged. It was the opinion of the court that the applicable statutes did not require the board of regents to grant the coach a hearing prior to his discharge. Accordingly, the requested writ of mandamus was denied.

Wisconsin

Gouge v. Joint School District No. 1
310 F.Supp. 984
United States District Court, W.D. Wisconsin,
March 16, 1970.

Two nontenure teachers who were not offered contracts for the following school year sued for damages and an order compelling their reinstatement. Their complaints alleged that they had been deprived of rights secured to them under the due process clause of the Fourteenth Amendment. In both cases the administrator of the school district recommended to the board of education that the contracts of the teachers not be renewed. He then informed the teachers and presented them each with a written reason for the contemplated action. The two were offered and accepted a meeting with the board. Afterward the board voted not to renew the contracts of the teachers.

The court ruled that no action for damages could be maintained against the board. The other procedural questions were decided adversely to the school district. The school board also contended that there was no right to renewal of the contracts under state law unless nonrenewal is based on impermissible constitutional grounds, and barring this, the board could refuse to renew a teacher's contract "for any cause or no cause at all." The court said

that this contention had been rejected in *Roth v. Board of Regents* (see case below). In accordance with that opinion, the court held that "a teacher in a public elementary or secondary school is protected by the due process clause of the Fourteenth Amendment against a nonrenewal situation which is wholly without basis in fact and also against a decision which is wholly unreasoned, as well as a decision which is impermissibly based (such as race, religion, or exercise of First Amendment, freedom of expression)." Because there was a genuine issue of material fact both as to identifying the reasons upon which the board had acted and whether there was any basis in fact for any of the reasons in either case, a decision on the merits was not reached.

The court held further that the minimum requirements of precedural due process set forth in *Roth* applied also to teachers in public elementary and secondary schools. Moreover, the school board's ultimate decision for nonrenewal may not rest on a basis of which the teacher was never notified or to which he had no fair opportunity to respond. The motion of the board of education to dismiss the suit was denied.

Roth v. Board of Regents of State Colleges
310 F.Supp. 972
United States District Court, W.D. Wisconsin.
March 12, 1970.

A nontenure assistant professor at Wisconsin State University–Oshkosh was not offered a contract for the following year. No reasons for this decision were given, and no hearing on the merits of the decision was offered, requested, or held. The professor brought suit alleging that the decision not to offer him a contract was in retaliation for expressions of opinion made during a period of disturbance and controversy on campus. He further alleged that the decision was not made under "ascertainable and definite standards governing the [university officials] in making this decision"; and that the decision had caused and will cause damage to his professional reputation. The defendant-school officials denied that the decision not to re-employ was one of retaliation and alleged that the professor was not re-employed because he was guilty of substantial neglect and violation of duty, violation of university rules, and insubordination. The professor moved for partial summary judgment declaring that he was entitled to a hearing on the merits of the decision not to retain him and requiring university officials to provide him with a hearing or offer him a contract for the next school year. The school officials sought summary judgment dismissing the action on its merits on the ground that the complaint failed to state a cause of action.

The principal contention of the officials was that the professor was hired for one year and that as a nontenured teacher he could be removed "at pleasure." They maintained that the decision not to rehire could be reached for "no reason or for any reason." Therefore, no statement of reasons need be given nor a hearing offered.

The court found it clear that the employment of a teacher could not be terminated because he exercised freedoms secured to him by the Constitution. This substantive constitutional protection, the court said, is unaffected by the presence or absence of tenure under state law. However, with respect to substantive protection against arbitrary nonretention, the court found uncertainty in the law. The question became whether the Fourteenth Amendment permitted nonretention on a basis wholly without factual support, or wholly unreasoned.

The court undertook to balance the nature of the government functions involved against the interest of the teacher that had been affected by governmental action. The court found that the university did have an interest in having time to observe a new teacher and during that time to have latitude to decide whether the new teacher should remain on the faculty. However, the court said that "no interest of the university is directly served by a regime in which a decision not to retain a newcomer may be made upon the basis wholly without support in fact or by a decision upon a wholly unreasoned basis." The balancing test, the court said, compels the conclusion that under the due process clause of the Fourteenth Amendment, a decision not to retain a professor could not rest on such bases. This standard, the court continued, as it applies to nontenure teachers, is intended to be considerably less severe than the standard of "cause" as it is applied to tenure teachers; and bases for nonretention of nontenure teachers enjoying minimum factual support or supported by subtle reasons would be acceptable.

In addition to affording the professor substantive protection against nonretention on arbitrary grounds, the court ruled that the professor was entitled to a fair procedure to determine whether legitimate grounds existed. The court directed the university to provide the professor with minimum procedural due process—a statement of reasons for the nonretention, notice of a hearing at which he may respond to the reasons, and a hearing if the professor appears at the appointed time and place. At such a hearing the professor was to have a reasonable opportunity to submit evidence relevant to the stated reasons.

The court ruled against the university's motion for summary judgment because of the lack of notice and hearing. The court also ruled against the university on its claim that the decision not to retain the professor enjoyed a basis in fact, was reasoned, and was not violative of the professor's freedom of expression. The court noted that a teacher's freedom of speech cannot be limited unless it is shown that his utterances harmed a substantial public interest, and the university officials had not exhibited beyond dispute that such harm existed. The university was ordered to provide the professor with reasons, notice, and a hearing, or in the alternative to offer him a contract for the next academic year.

NOTE: This decision was affirmed by the United States Court of Appeals, Seventh Circuit.

St. Laurent v. Gousha
313 F. Supp. 1033
United States District Court, E.D. Wisconsin,
June 24, 1970.

Three nontenure teachers in the Milwaukee public school system sought a preliminary injunction against the

school officials, alleging that their right to due process was violated when their names were omitted from the list of teachers who were to serve for the second semester. The school board sought to dismiss the action. Each of the teachers had a written contract which contemplated two semesters of employment, and the teachers charged that the failure to retain them for the second semester was equivalent to an arbitrary discharge.

The teachers did not claim that their discharge was for any conduct protected under the First Amendment, but rather that the failure to offer them a hearing on the discharge denied them due process. The school officials asserted that administrative hearings were afforded the teachers.

Although the issue was not First Amendment rights of the teachers, the court said that the record was not sufficiently clear to establish that the teachers' charges of arbitrariness were unfounded. Even if the school system had ulimited discretion to discharge the teachers, the court said, it did not follow that "such discretion could be exercised without a proper hearing." Therefore, the court denied the motion of the school officials to dismiss the action so as to permit the teachers to offer evidence to support their claim that procedural due process was denied to them. The teachers' motion for a preliminary injunction was also denied.

Wyoming

Jergeson v. Board of Trustees of School District No. 7, Sheridan County
476 P.2d 481
Supreme Court of Wyoming, November 6, 1970.

A high-school journalism teacher appealed from the trial court decision affirming his dismissal. The teacher had been employed for the 1968-69 school year and had already signed a contract for the next school year when he received a notice of dismissal. The grounds given were that his "philosophy and practice of education is detrimental to the best interests of the high school students" and that he was incompetent as evidenced by the April 1 edition of the school newspaper for which he was the advisor. A hearing was held before the school board which then ordered his dismissal as of the end of the semester.

On appeal the teacher challenged the decision of the trial court on various grounds. The first group of challenges related to errors allegedly committed by the trial court and for the most part were procedural and were decided against the teacher. The last argument in this group challenged the lower court finding that there was substantial evidence to support the board of education charge that the teacher "was responsible to censor" the school newspaper. In view of the fact that the teacher was the advisor for the paper and that he taught journalism, the appellate court upheld the trial court finding that the school board could well be justified in deciding that the articles in the newspaper in question were a demonstration in poor journalism and another example of the teacher's incompetency.

The teacher also argued that his dismissal was discriminatory, a violation of due process for failure to give notice, and arbitrary and capricious as to any alleged "dirty poem" which a student wrote on a blackboard of his classroom and which the teacher permitted to remain there for about two weeks. On the notice aspect, the teacher claimed that the board should have rejected any testimony about the poem since he was not informed that this would be brought up at the hearing. In rejecting this claim, the appellate court said that although the charge that the teacher's philosophy and practice of education was detrimental to the high-school students did not provide a delineation of incidents, it was a basis for questioning the teacher's various activities in the school, especially in the absence of objections. The discrimination charge resulted from the fact that another teacher who used the classroom where the blackboard and poem were located was not disciplined. The appellate court said that it was obvious that the board did not base its action on this single incident but on various occurrences and circumstances in determining whether the teacher met the minimum standards of conduct and propriety. Thus, the discrimination charge and the claim that the action of the board was arbitrary and capricious were found without merit by the appellate court.

The teacher argued that the board raised a question as to his personal beliefs by admitting hearsay evidence as to his advocacy of the use of marijuana and the takeover of the school administration. The appellate court ruled that the evidence in question was not hearsay and, furthermore, no objection was made by the teacher to its introduction at the hearing. Other alleged errors of the district court relating to testimony concerning the teacher's control of the classroom were found without merit by the appellate court. Likewise discounted was the argument of the teacher that the board waived any previous wrongdoing by the teacher when it offered him a contract for the next year.

Other charges of the teacher, including that the board should not have considered his appearance and dress and that the board failed to give him notice of all the charges against him, were not considered by the appellate court to be reasons for reversal of the trial court determination.

The final arguments of the teacher were (a) that the existing method of appeal was either unconstitutional, or if it was constitutional, it was not a "zealous examination of the whole record by the reviewing authority" as requisite; (b) that the board was estopped from inquiring into any conduct prior to the date that it offered the teacher a contract for the next year. The appellate court said that the teacher presented neither a cogent argument nor authority for his latter argument and, therefore, would not consider the claim. As to the former argument the appellate court stated that the teacher had shown no clear abuse of his rights to warrant overruling the determination of the board. Concluding that the board had found that the teacher departed from proper standards and that the trial court found no grounds for reversal of that decision, the decision of the trial court was affirmed.

Schultz v. Palmberg
317 F.Supp. 659
United States District Court, D. Wyoming,
October 2, 1970.

Two professors at Central Wyoming College whose contracts were not renewed brought suit against the college

president and members of the board of trustees seeking to compel the renewal of their contracts and damages. Both had been employed by the college for two years when they were notified that their contracts would not be renewed for the 1970-71 school year. They requested a formal hearing before the board; this request was denied. The board however, did offer to meet informally with them. One of the two accepted this offer but considered the results of the meeting unsatisfactory. Suit was then brought under the federal civil rights act. The professors alleged that the failure of the board to renew their contracts was arbitrary, unreasonable, and accomplished without a hearing, all of which resulted in a denial of their right to continued employment. They alleged further that they were being penalized for the exercise of their First Amendment rights. The defendant college officials sought to dismiss the action, arguing that the professors did not have a right to continue employment, that the board acted lawfully in not offering them contracts, and that they did not have tenure so there was no right to a hearing.

The court held that the professors did not have a right of tenure or continued employment by statute or contract and hence the denial of their request for a formal hearing was not a deprivation of a right, privilege, or immunity secured by the federal Constitution and laws. The court noted that the professors were employed solely on a year-to-year basis and that their re-employment absent tenure was in the discretion of the board. The court said that school boards should have a wide range of discretion in the management and operation of the school district, including the employment procedures of hiring and rehiring, and a teacher who has not had the privileges of tenure incorporated into his contract cannot claim the benefits of such. The court found it clear from the face of the professors' complaint that the board had not prevented them from exercising their First Amendment rights.

It was the opinion of the court that the board acted within the scope of its discretion in failing to offer the two professors contracts. The complaint disclosed that the action of the board was not clearly arbitrary, capricious, or unreasonable. Since the professors made no allegations in their complaint which would demonstrate an abuse of discretion by the board, they, therefore, failed to state a cause of action upon which relief could be granted. Accordingly, the court granted the motion of the college officials to dismiss the action.

SCHOOL DESEGREGATION

IN ADDITION to the cases reported under this heading, there are a number of other 1970 court cases initiated by public-school pupils for school desegregation which contained issues on assignment of teaching staff on a racial basis. The summaries of these cases are not included here because this report is limited to digests of cases in which teachers themselves are litigants. Those interested in this aspect of teacher assignment are referred to the school desegregation cases in *The Pupil's Day in Court: Review of 1970*, another NEA Research Division school law publication.

Alabama

Foster v. Board of Education of Bullock County, Alabama
431 F.2d 648
United States Court of Appeals, Fifth Circuit,
September 15, 1970

A black educator brought suit against the board of education charging that certain administrative decisions of the board were racially motivated. The trial court found that the decisions were not motivated by race and the educator appealed.

At the close of the 1968-69 school year the board of education reorganized its central office, abolishing two administrative positions. This left the plaintiff in this case and a white administrator without jobs. Both were offered other positions, including assistant principalships in the school district, but the black educator declined to accept the offer. During the period of reorganization a principalship opened at a formerly white high school. The black educator applied for this position, but a white man from outside the school system was selected for the job. The educator claimed that the board's decision to abolish his assistant superintendent position and the denial of his application for the principalship was motivated by and related to racial discrimination.

At the trial court hearing, extensive findings of fact were made including: that the central office of the school system was overloaded administratively; that from an administrative and educational standpoint abolishing the offices was acceptable; that abandonment of the jobs was not racially motivated; that the black educator's application for principal was given due consideration by the board, but that the board determined that the person hired was qualified and better suited for the job; that acceptable criteria were used by the board in appraising the applications and that race was not a basis for denying the application for the principalship.

The appellate court was of the opinion that the record in the district court clearly and convincingly supported that court's determination and that the black educator had failed to demonstrate that the decisions of the school board were arbitrary or based on racial discrimination. The judgment of the district court was accordingly affirmed.

United States v. Board of Education of the City of Bessemer
417 F.2d 846
United States Court of Appeals, Fifth Circuit,
July 1, 1969.

This appeal involved plans approved by the district court for faculty desegregation in Bessemer, Birmingham, and Jefferson County. The issue was whether the plan carried out the appellate court's directive that interim goals be established for achieving total faculty desegregation by the 1970-71 school year.

The appellate court reversed and the cases were remanded to the lower court with direction that it consider each of the cases in light of the Supreme Court opinion in *United States v. Montgomery County Board of Education*, (89 S.Ct. 1670 (1969)), wherein a fixed mathematical ratio for faculty desegregation was approved.

Arkansas

Jackson v. Wheatley School District No. 28 of St. Francis County, Arkansas
430 F.2d 1359
United States Court of Appeals, Eighth Circuit,
August 11, 1970.

Four black teachers who were not rehired following integration brought suit against the school board, charging that the failure to rehire them for the 1968-69 school year was based on racial considerations. The district court dismissed their complaint and the teachers appealed.

The Wheatley school district serves 425 pupils, 60 percent of them black, and had been using freedom of choice as a method of desegregation. Central School, where the teachers in this case were assigned, was an all-black facility serving the first five grades. When 60 of the 90 pupils at Central elected to attend the formerly white school, the school board decided to close Central. Three of the five black teachers at Central and one white teacher at another school were not rehired for the next school year because of

a decrease in the number of teachers necessary in the district. According to the board's minutes, the fourth black teacher was not rehired because he did not have a proper certificate and was teaching on an emergency certificate that expired on August 31, 1968.

The issue presented on appeal was whether the district court erred in failing to find that the discharge of these teachers was racially motivated. The district court had found a question of qualifications as to three of the black teachers and had stated that two of them were "primarily responsible for the low rating" at Central. The appellate court noted that previous decisions held that nondiscriminatory standards must be applied in considering reemployment of teachers released because of integration. Although the district court had stated that the teachers were responsible for the low rating, the appellate court found that there was no evidentiary basis for the statement, nor was there any finding that the qualifications of the three teachers with valid certificates were inferior to those of teachers who were retained or subsequently employed to fill vacancies. Although there was some vague evidence presented to the effect that the school board had received complaints about the failure of these three teachers to pay their bills, the appellate court said that if the complaints were not such as to require action against the teachers while they taught at the black school, the complaints would not constitute a valid basis for refusing employment at the integrated school. Further, the undisputed evidence that black representation on the faculty was decreased in 1968-69, and the evidence that the ratio of black teachers to white teachers in the school system did not remotely approach the proportion of black pupils to white pupils, was substantial evidence supporting racial discrimination.

The decision of the district court was affirmed as to the one teacher whose emergency certificate had expired and was reversed as to the other three teachers. The appellate court remanded the case with directions that the district court hold further proceedings and determine the appropriate remedy.

Louisiana

Carter v. West Feliciana Parish School Board
432 F.2d 875
United States Court of Appeals, Fifth Circuit,
September 25, 1970.

As a result of a decrease in pupil enrollment the school board anticipated a reduction in teaching staff for the 1970-71 school year. As one of the bases to determine which teachers would not be rehired the school board proposed to administer subject-matter achievement tests of the National Teachers Examination. The results of these tests were to constitute one criterion for the evaluation of all teachers. Black teachers sought a temporary restraining order to prohibit the board from administering the test. The district court granted the order but dissolved it after a hearing. This appeal followed.

The district court had allowed the test to be administered in the belief that the requirements of the *Singleton* decree mandated that the ratio of black to white teachers remain the same should teachers be laid off. Thus, the lower court believed that the scores of black teachers could be compared only with the scores of other black teachers and those of white teachers with other white teachers in order to maintain the faculty ratio.

The appellate court held that the district court had misinterpreted the language of *Singleton*. That case, the appellate court said, does not contemplate freezing the faculty ratio which is present when faculty desegregation takes place in the system. Rather, it contemplates that faculty desegregation will be accomplished by invoking the system-wide ratio as a rule for each school, and thereafter the system will function from the standpoint of faculty and staff on the merit system. This means, the court continued, that once a unitary system has been established, the system-wide ratio may thereafter change from time to time as a result of nondiscriminatory application of objective standards of selection and composition of the faculty. Discharges because of reduced enrollment must be based on nondiscriminatory objective and reasonable standards.

The teachers who brought suit had charged that the National Teachers Examination is discriminatory between white and black teachers. This was the prime issue in the case on which the district court had not made findings. Therefore, the appellate court remanded the case with directions that the district court make findings of fact and conclusions of law after a full development of this issue. Findings of fact were also directed as to the objectivity and reasonableness of the other criteria that the school board sought to use in reducing the faculty, including whether such standards were nondiscriminatory.

Williams v. Iberville Parish School Board
314 F.Supp. 1104
United States District Court, E.D. Louisiana,
Baton Rouge Division, June 30, 1970.

Two black principals who were reassigned to positions as coordinating principals brought suit against the school board, charging that they were "demoted" because of their race. The school board contended that the newly created positions were promotions and were given to these two principals because of their superior ability.

Iberville Parish was under a court desegregation order that had been advanced from September 1970 to February 1970. The new positions of coordinating principal had been under consideration and were scheduled to be implemented in the final phase of the desegregation plan. When the date for implementation was changed on short notice, the school board was unprepared and the duties and responsibilities of the new positions were not outlined nor were the offices for these positions adequately equipped. Prior to their reassignment, the two principals in this action were the only black principals in the school system. They were replaced by white principals. According to the court desegregation order, a staff person dismissed or demoted could not be replaced by a person of another color until each displaced person who was qualified had an opportunity to fill the vacancy and had failed to accept an offer to do so. The principals contended that they were demoted in violation of the court order.

Shortly before the hearing on this case the school board formulated a list of the duties and responsibilities of the coordinating principals. As of the date of the hearing, however, the two appointees to these positions had not been charged with any of the enumerated duties. Both of the principals agreed that if they were given the duties and responsibilities set out in the list, the jobs would be meaningful.

After reviewing the list of duties and hearing testimony of school-board officials and other educators, the court concluded that the position of coordinating principal was not a demotion and is and will be in the future a definite promotion over the position of principal of a single school. There was evidence that a salary increase was under consideration for the two principals and that many others, both black and white, had been considered for the positions, and that these two principals had been chosen for their ability and qualifications. It was also the opinion of the court that if in fact the duties and responsibilities of the positions as outlined in the school board list were not actually assigned to the principals, the court would have no hesitation in ordering them to be reassigned to their former positions as principals.

Tennessee

Hatton v. County Board of Education of Maury County, Tennessee
422 F.2d 457
United States Court of Appeals, Sixth Circuit, February 26, 1970.

(See page 33.)

Texas

Bonner v. Texas City Independent School District
305 F.Supp. 600
United States District Court, S.D. Texas, Galveston Division, September 2, 1969.

(See page 70.)

Harkless v. Sweeny Independent School District
427 F. 2d 319
United States Court of Appeals, Fifth Circuit, June 2, 1970. Certiorari denied, 91 S.Ct. 451, January 11, 1971.

(See *Teacher's Day in Court: Review of 1969*, p. 35; *Review of 1968*, p. 39.)

Ten black teachers who were not re-employed by the school district brought suit seeking reinstatement and back pay. The suit was filed against the school district, the superintendent, and each member of the board in his individual as well as his official capacity for alleged violation of the teachers' civil rights in regard to failure to offer them re-employment. There had been a reduction in the number of teaching positions in the district following integration and the closing of the all-black school. Following an adverse judgment the teachers appealed.

The district court had dismissed the case in the belief that the federal civil rights statute (Section 1983) did not permit suit to be brought against municipal corporations or the school authorities in their official capacities. This belief was based on *Monroe v. Pape* (365 U.S. 167), a 1961 Supreme Court case involving a suit for damages for misconduct of police officers. The action was against the police officers and the city which employed them. The High Court decided in that case that municipal corporations were not within the ambit of the federal civil rights statute, but that under this statute, the action could be maintained against the police officers. In the instant case the remedy sought by the teachers was equitable in nature rather than damages. The appellate court said that while the issue was not free from doubt, it was of the opinion that the school district was included within the meaning of "persons" in the civil rights statute for the equitable relief sought and that the district court was incorrect in holding to the contrary. The court also felt it well settled that under the civil rights statute, a suit could be maintained against the individual school board members and the school superintendent in both their official as well as individual capacities.

The last question considered by the appellate court was the propriety of the jury trial which had been granted to the defendants by the district court. The higher court concluded that the prayer for back pay was not damages but that back pay was an integral part of the equitable remedy of reinstatement. The grant of the jury trial was error. The decision of the district court was reversed.

NOTE: The Supreme Court of the United States declined to review the decision.

McDonald v. Marlin Independent School District
313 F.Supp: 1162
United States District Court, W.D. Texas, Waco Division, November 10, 1969.

(See page 71).

TEACHER/SCHOOL BOARD NEGOTIATION

Colorado

Local 858 of the American Federation of Teachers v. School District No. 1 in County of Denver
314 F.Supp. 1069
United States District Court, D. Colorado,
June 3, 1970.

In 1969, Local 858 of the American Federation of Teachers (AFT) lost a representative election to the Denver Classroom Teachers Association (DCTA). The union then brought suit against the school board and the DCTA intervened. The AFT charged that the school district's denial to the AFT of the use and access to certain school facilities violated the constitutional rights of the union and certain of its members. Specifically the AFT sought to enjoin the school district from denying it the right to use school buildings for meetings free of charge, the right to use school bulletin boards and teachers' mailboxes except during election campaigns, and the right to have dues deducted from teachers' salaries. These denials were made pursuant to the bargaining agreement between the school district and the DCTA.

The first question before the court was the issue of jurisdiction. The court concluded that it did have jurisdiction over the subject matter of the case and that the school district was a "person" within the meaning of the civil rights act for the purpose of injunctive and declaratory relief.

The next question was whether the First Amendment rights of the AFT were violated by the granting of exclusive privileges to the DCTA. The court concluded that they were not. The court noted that there is a First Amendment right to form and join unions and this right extends to teachers. However, the court characterized the problem as not one of free speech, but rather whether or not the granting of certain exclusive privileges to the DCTA and denying them to the AFT impairs the right to organize and form unions of Denver teachers who are not members of the DCTA. The court found only limited interference with the union's right to associate in that it was not granted equal access to internal channels of communication or a dues check-off. Further, there was no allegation that the normal means of communication with teachers was impaired. The court also said that several interests of the school district were served by the grant of exclusive privileges to the DCTA. Among these it provides the duly elected representative a ready means of communicating with all teachers, since the DCTA represents *all* teachers not just its members, and it eliminates inter-union competition for membership except at election time and thus insures orderly functioning of the schools and labor peace. The court concluded that neither the First Amendment nor any other constitutional provision entitles a public employees union which has lost a representative election to the special aid of an employer's collection and disbursing facilities.

The union also asserted that the exclusive privileges granted the DCTA denies it the Fourteenth Amendment right of equal protection under the law. The court said that different treatment granted the two labor organizations could be justified only by a compelling state interest. The court was satisfied that the compelling state interest was present here in the form of labor peace and stability in the vital area of public education.

The court concluded that the grant of exclusive privileges to the DCTA while denying the same privileges to the AFT did not deprive the latter of any constitutional right. The motion of the school district for summary judgment was granted.

Florida

Dade County Classroom Teachers' Association v. Rubin
238 So.2d 284
Supreme Court of Florida, July 29, 1970.
Certiorari denied, 91 S.Ct. 569, January 18, 1971.

(*See Teacher's Day in Court: Review of 1969*, p. 37.)

The Dade County Classroom Teachers Association and its officers were found guilty of contempt of court for violating a temporary injunction prohibiting them from striking. On appeal, the state supreme court reversed the lower court decision because of the failure of the lower court to grant a jury trial. On remand, the trial court entered a rule requiring the Association to present evidence why it should not be punished for contempt. The Association filed its response and sought to dismiss the contempt citation. The trial court denied the motion to dismiss and the Association appealed.

The Association contended that the injunction of February 23, 1968, was issued without giving it an opportunity to be heard or to participate in the proceedings. The appellate court found that the Association had notice and the opportunity for an adversary hearing on the injunction issued February 22, 1968, which was substantially the same as the injunction entered February 23, 1968. Because of the Association's willful violations of the injunction and the absence of any resort to testing the injunction judicially, the court held that the Association had no standing to raise the issue of its validity.

The Association further complained that the injunction was issued even though the strike produced neither violence nor the threat of violence. The appellate court held that the temporary injunction was proper even without a showing of

violence, since in the absence of specific statutory authority, public employees do not have the right to strike. The appellate court noted that inherent in its previous decision on remand was its finding that the trial court had jurisdiction to enter the temporary injunction and that it was properly entered. These issues had been settled in the earlier appeal and were no longer open to question on the present appeal. Accordingly, the decision of the lower court was affirmed.

NOTE: The Supreme Court of the United States declined to review this case.

Orr v. Thorp
308 F.Supp. 1369
United States District Court, S.D. Florida,
December 10, 1969.

Teachers employed by the Palm Beach School System and the Palm Beach County Classroom Teachers Association, the Florida Education Association, and the National Education Association brought suit challenging the constitutionality of an act of the Florida Legislature which authorized dismissal of any administrative or supervisory personnel who joined a professional organization whose activities include collective representation of members of the teaching profession with regard to terms, tenure, and conditions of employment. The act was applicable only to Palm Beach County.

The court found the act to be a classic example of a Fourteenth Amendment denial of equal protection. It pointed out that the defendant county school officials made no effort to demonstrate that Palm Beach County was in any way unique so as to justify separate legislation for its educational employees nor was any compelling state concern shown to underlie the statute. Further, the act impinged on the basic freedoms of expression and association protected by the First and Fourteenth Amendments. The court held the statute unconstitutional and enjoined its enforcement.

Orr v. Thorp
427 F.2d 1129
United States Court of Appeals, Fifth Circuit,
June 10, 1970.

Members of the Palm Beach County Classroom Teachers Association (CTA) sued the members of the county board of public instruction under the federal civil rights statute, charging discriminatory treatment. The district court dismissed the complaint for failure to state a cause of action and the teachers appealed.

The facts as alleged in the complaint and taken by the court as admitted to decide if the complaint was properly dismissed were as follows:

From 1949 until 1968, the CTA represented the teachers of Palm Beach County and the board dealt with the CTA as the representative of the teachers. In 1968, an educational crisis gripped Florida and took the form of work stoppages and attempted mass resignations in Palm Beach County. At that point the school board began to develop its professional affairs policy which in the words of the complaining teachers was designed to eliminate the CTA and to create an organization of all employees over which the board had complete control. In furtherance of this policy, the teachers alleged that the board would hear representations only by individual teachers or committees set up by its policy and not by organizations such as the CTA; that school-board members acknowledged that the purpose of the policy was to destroy the CTA; that CTA members could no longer obtain leave with or without pay to attend education association meetings, permission for which was formerly given and was currently being given to non-CTA members; that the CTA was forbidden to welcome new teachers and acquaint them with the CTA and its programs; and finally that CTA members were threatened with discriminatory treatment.

The court said that the teachers had alleged discrimination that could significantly deter freedom of association and that without further evidence it was impossible to ascertain if the school board had explanation or justification for its action. The court noted that teachers possess a constitutional right to free association without unjustified interference, and the fact that no teacher was actually discharged as a result of the school-board policy did not preclude a remedy for the discrimination that had occurred.

The school board argued that the judgment of the district court dismissing the action should be affirmed because the members of the board were acting in their official capacity and, therefore, were outside the coverage of the federal civil rights statute; that the teachers' remedy is under state law and should be handled by state courts; and that the teachers did not present a proper class action. The appellate court rejected all of these contentions, saying that the teachers stated a federal cause of action and did not seek to interpret or attack Florida statutes. The decision of the district court dismissing the action was reversed, and the case was remanded for a full hearing on the merits.

Illinois

Board of Education of the Kankakee School District No. 111 v. Kankakee Federation of Teachers Local No. 886
264 N.E.2d 18
Supreme Court of Illinois, September 22, 1970; rehearing denied December 3, 1970. Certiorari denied, 91 S.Ct. 2203, June 7, 1971.

A teachers union and certain of its officers and members were convicted of criminal contempt by the lower court. The charges of contempt arose when the union and its members ignored and refused to obey a preliminary restraining order enjoining a strike by the union. The union had no notice that the board was seeking a restraining order, but the individual defendants were served with the order shortly after it was issued.

In seeking reversal of the contempt convictions, the teachers relied on a case of the Supreme Court of the United States that set aside a restraining order issued without notice that barred a rally. The Illinois Supreme Court found the cited case inapposite and without persuasion because what was enjoined here was the picketing which is

not the precise legal equivalent of free speech as the rally was. The Illinois appellate court stated that it was not dealing with prior restraint, nor was the trial court, when it was asked to issue the temporary restraining order, faced with a constitutionally protected area of free speech. It is settled, the court said, that the First and Fourteenth Amendments do not afford the same kind of freedom to those who communicate by picketing as they afford to those who communicate by pure speech. The court noted that the unlawful strike was already in progress when the temporary restraining order was sought and that the picketing the school board was seeking to restrain was in furtherance of the strike. Further, in the cited case the court order was obeyed and then challenged judicially, while in this instance the union deliberately ignored and disobeyed the court order instead of seeking judicial relief from its consequences.

The appellate court held that under the circumstances, the circuit court "had the authority and duty to issue the temporary restraining order, and that defendants' disobedience of such order, then outstanding and unreversed, merited their punishment for contempt." The judgment of the circuit court was affirmed.

NOTE: The Supreme Court of the United States declined to hear an appeal from this decision.

Board of Junior College District No. 508, County of Cook v. Cook County College Teachers Union, Local 1600
262 N.E.2d 125
Appellate Court of Illinois, First District, Fourth Division, June 26, 1970. Certiorari denied, 91 S.Ct. 2168, May 24, 1971.

The teachers union and its president appealed from the lower court order finding them guilty of contempt of court and imposing fines on both and a jail sentence on the president. The union had struck the junior college board in violation of a temporary injunction issued by the court. After the dispute was settled, the board asked that the court dissolve the injunction. The court refused, and instead directed the board's attorney to file a petition against the union and the president to show cause why they failed to comply with the injunction. The board attorney alleged that this placed him in a position of potential conflict of interest. The court was unsuccessful in getting the state attorney for the county to prosecute, and thereupon special counsel was appointed. The union and the president were found guilty of contempt.

On appeal, the defendants first contended that the conviction should be reversed because it was based on an unconstitutional and void temporary injunction. The appellate court held that whether the trial court rightfully or wrongfully entered the temporary injunction and whether it was constitutionally permissible were questions that could not be litigated in a contempt proceeding. The next point urged by the defendants was that the court erred in not dissolving the injunction at the request of the college board. The appellate court disagreed. It said that the trial court in its discretion directed the filing of a petition to determine if any order of the court had been violated. Thus, the proceedings were to determine whether defendants were guilty of criminal contempt. The fact that the board was prepared to condone the illegal strike or contempt acts could not bind the trial court to also condone such conduct.

Likewise upheld was the refusal of the trial court to grant a change of venue because of the alleged prejudice of the judge. The appellate court held that a request for a change in venue must be made at the first opportunity, and in this case no request was made until 23 days after the alleged prejudice first came to the attention of the defendants, and after the trial court had made three important rulings in the case. The appellate court also found no merit to the contention that the president was arbitrarily singled out for punishment since this was in the discretion of the trial court. The appellate court concluded that there was no abuse of discretion in proceeding against the president even though other individuals may have engaged in the same conduct.

The final contention involved the sufficiency of the evidence against the defendants. They alleged that certain newspaper articles and letters tending to prove the occurrence of the strike should not have been admitted into evidence. The appellate court held the evidence admissible and noted that there was also testimony of several persons ascribing to the picketing and the union president's participation in the picketing. The appellate court ruled that this evidence was sufficient to find the defendants guilty of contempt of court. The judgment of the lower court was affirmed.

NOTE: The Supreme Court of the United States declined to hear an appeal from this decision.

Indiana

Anderson Federation of Teachers, Local 519 v. School City of Anderson
254 N.E.2d 329
Supreme Court of Indiana, January 19, 1970. Certiorari denied, 90 S.Ct. 2243. June 29, 1970.

(See *Teacher's Day in Court: Review of 1969*, p. 39.)

The teachers union had been found in contempt of court for violating a restraining order which directed the union and its members to refrain from picketing and striking against the school corporation. This was affirmed on appeal. In the present proceedings, the union asked for a rehearing of that decision. Two officers and members of a Teamsters union local also filed a petition for leave to file a brief *amicus curiae*. In that petition they alleged that the judgment against the teachers union was a nullity because that local is not a separate entity.

The school corporation objected to the motion of the Teamsters since under Indiana law a question or issue may not be presented to the court for the first time on a motion for rehearing. The court agreed and denied the Teamsters' petition. But because the question cast reflection on the counsel for the teachers union and suggested that they

failed to raise a pertinent point, the court pointed out that the restraining order in issue was issued against the Teachers Local 519 and every member and all persons combining and conspiring with them. Thus, the judgment rendered was valid since individual members were included in the restraining order. The court felt that counsel for the teachers union was to be commended for not raising a question that was obviously not involved in the case.

The petition for rehearing filed by the teachers union raised the question that the court was incorrect in holding that government employees did not have the right to strike in that there was no state statute declaring such a right. As in its original decision in this case, the court held that "in the common law state of Indiana the public strike is not lawful" and that any change in the law which might permit any type of strike by public employees could be accomplished only by express "public policy" legislation so stating.

Both the petition to intervene *amicus curiae* and the petition for rehearing were denied.

NOTE: The Supreme Court of the United States declined to review this case.

Roberts v. Lake Central School Corporation
317 F.Supp. 63
United States District Court, N.D. Indiana,
Hammond Division, June 11, 1970.

(See page 38.)

Kentucky

Snapp v. Deskins
450 S.W.2d 246
Court of Appeals of Kentucky, January 23, 1970.

On July 1, 1969, the Pike County Board of Education made substantial transfers of administrative and supervisory personnel for the next school year on the recommendation made by the new superintendent on the same day he took office. Nine of those persons who were transferred brought suit against the superintendent and the board members, charging that their transfers were in violation of state statute, were in violation of the negotiated agreement between the board and the local education association, and were arbitrary and capricious. One more teacher joined the suit because his employment had been terminated and he had not been given another assignment. The Kentucky Education Association intervened, seeking a declaratory judgment that the transfers were in breach of the negotiated contract.

The trial court found in favor of the one teacher who had not been re-employed, but dismissed the complaint of all of the other employees. This appeal followed.

All of the employees who were transferred were tenure employees, and none received any reduction in salary although some were demoted. The out-going superintendent who had been terminated by the board had submitted his recommendations for personnel assignments for the next school year in April. All of the recommendations for classroom teachers were approved, but the board deferred action on the administrative and supervisory personnel, only approving their continued employment, not their assignment. The out-going superintendent then wrote to each person in the deferred placement group, stating that each had been employed but that placement had been deferred. The letter also stated that "unless you do something that will cause your Superintendent to doubt your integrity as a school leader, my recommendation that you continue in the position that you now hold still stands." The transfer letters were sent on July 1, when the new superintendent took office.

The first contention of the school employees was that the transfers violated Kentucky law. The applicable statutes stated that teachers must be notified by July 1 of the best estimate as to their new salary and that transfers after July 15, could be made only for certain specified reasons. Reasons for any salary reduction must be furnished the teacher by May 15. The statutes also provide that employment is in the school district and not in any particular position or school. The employees argued that the board had no authority to defer action on the assignments after the recommendations of the out-going superintendent were presented at the April meeting. The court disagreed with this argument and held that even if the board had accepted the recommendations of the old superintendent, position assignments could still be changed prior to July 15. Since none of the teachers received any salary reduction, the statutory notice by July 1 did not apply. The court concluded that the action of the board was within the statutory prescriptions of time.

The second contention of the employees was that the contract between the education association and the board was violated. The contract provided that teachers would be notified of their tentative program assignment prior to May 1 and notified of any changes in that assignment by July 1 of the same year. The court held that the April letter from the old superintendent was sufficient notice of tentative assignment and that the final assignment which was given by July 1 clearly complied with the contract. The contract also provided that if a teacher was transferred to another school less conveniently located for him, facts must be presented as to the cause of the transfer but "the Superintendent has the final say." The facts as to the causes of the transfers were not presented, but the court did not find that this was a prerequisite to a valid transfer.

The final contention of the employees was that the transfers were invalid because they were arbitrary. The court found some merit in this contention. However, the court said that the burden was on the employees to show *nonjustification* for the reassignments. Although the school authorities offered little justification for their action, the court was not prepared to say that inferences from the employees' evidence were so strong with respect to any of the transfers involved as to *require* a finding of arbitrariness. Rather, the court believed that the inference would *authorize* such a finding. Since the fact finder reasonably could find arbitrariness as to some of the transfers, the cases were remanded to the trial court for its determination on the issue of arbitrariness as to each transfer.

Louisiana

Beauboeuf v. Delgado College and Its Board of Managers
428 F.2d 470
United States Court of Appeals, Fifth Circuit,
July 6, 1970.

(See *Teacher's Day in Court: Review of 1969*, p. 40.)

A teachers union sought a mandatory injunction to compel the college to bargain with it. The district court denied relief and the union appealed. The union alleged that it was the exclusive representative of the teachers at the college.

The appellate court affirmed the district court decision. In so doing, it noted that Louisiana has no statute permitting or requiring publicly owned educational institutions to bargain with their teachers. The appellate court also agreed with the district court that the case presented no cognizable issue of due process or equal protection.

Massachusetts

Worcester Industrial Technical Institute Instructors Association v. Labor Relations Commission
256 N.E.2d 287
Supreme Judicial Court of Massachusetts,
Worcester, March 4, 1970.

The Worcester Vocational Teachers Association sought certification as the collective bargaining representative of about 120 teachers employed at three Worcester vocational schools. The Worcester Industrial Technical Institute Instructors Association (WITIIA) intervened in the proceedings before the Labor Relations Commission. It proposed to carve two smaller units out of the main one, contending that the teachers they sought to represent were professional employees and should not be classified with nonprofessional employees. The Labor Relations Commission held a hearing and concluded that all of the teachers were professional employees with a mutuality of interests in the teaching of the students, use of the same facilities, and subject to the same over-all supervision. The commission, therefore, directed that a representative election be held. The WITIIA sought a court review of that decision. The lower court upheld the commision's decision and an appeal was taken.

The appellate court noted that appeals may be taken from a final order of an agency in an adjudicatory proceeding. However, a commission order for an election is not such a final decision and is not subject to judicial review. Ordinarily judicial review of certification issues may take place only if the decision is based on an unfair labor practice or if there are extraordinary circumstances present. Since none of these circumstances pertained, the court held that the parties must exhaust their administrative remedies prior to applying for judicial review. The lower court decision was therefore upheld.

Michigan

Hillsdale Community Schools v. Michigan Labor Mediation Board
179 N.W.2d 661
Court of Appeals of Michigan, Division 2,
May 26, 1970.

The Hillsdale Community Schools Principals' and Supervisory Association (PSA) petitioned the Michigan Labor Mediation Board (MLMB) for an election of a unit of employees consisting of principals; curriculum, reading, and ESEA coordinators; head librarians; and physical education director. The school district opposed the petition, and the MLMB ruled that the PSA was a proper unit. The school district then appealed this decision to the court.

The main issue on appeal was whether under the provisions of the Public Employment Relations Act, supervisory personnel who are public employees constitute a proper collective bargaining unit and are entitled to be represented by representatives of their own choosing. It was agreed that all of the persons to be included are supervisory personnel. The dispute concerned the interpretation of a section of the act which provided that a bargaining unit shall be composed of "either the employees of 1 employer in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units." The court held that the prohibition against executive or supervisory personnel was a modification of the first type of unit and not of the remaining types of units, nor was the language in itself a prohibition against executive or supervisory employees constituting a bargaining unit. Additionally, the legislature had designated the MLMB as the agency to determine the appropriate bargaining units, and previous decisions of the agency and of the court had held that supervisory personnel who were public employees were entitled to organize for collective bargaining purposes.

The argument of the school district that it was against public policy for supervisors to organize was rejected by the court since by legislative enactment it is the public policy of the state that public employees may organize. Likewise rejected was the school district's argument that principals and the rest of the members of the unit did not have a sufficient community of interest with each other for inclusion in a single unit.

The decision of the MLMB was affirmed.

Smigel v. Southgate Community School District
180 N.W.2d 215
Court of Appeals of Michigan, Division 1,
May 28, 1970; rehearing denied August 3, 1970

Teachers in the Southgate school district who were not members of the Southgate Education Association (SEA) brought suit against the school district and the Association, challenging the validity of the agency shop provision in the negotiated contract between the parties. The lower court denied relief and the teachers appealed.

The agency shop provision in question provided, as a condition of employment, that teachers in the school district who were SEA members authorize the deduction of membership dues and assessments including the dues of the National Education Association and the Michigan Education Association, and that those who were not members of SEA authorize the deduction of a representation fee of an equivalent amount to the Association. Teachers who declined to do either were subject to dismissal.

The appellate court pointed out that Michigan law requires the selected representative of a group of public employees to bargain for all of the employees, union and nonunion. Since benefits thus derive to all of the teachers, not just Association members, the court said it would be inequitable not to require nonmembers to pay their proportionate share of the cost of obtaining and administering such benefits. The appellate court concluded that the validity of the agency shop provision in this instance hinges on the relationship between the payment of a sum equivalent to the dues of the three associations and the nonmembers' proportionate share of the cost of negotiating and administering the contract. The court said that if this payment was either greater or less than the proportionate share of the nonmember, the agency shop provision was in violation of the state public employment relations act. Consequently the case was remanded to the trial court for a finding of this relationship.

Missouri

St. Louis Teachers Association v. Board of Education of the City of St. Louis
456 S.W.2d 16
Supreme Court of Missouri, Division No. 2,
July 13, 1970.

The teachers association and several teachers sought a declaratory judgment against the board of education and other school officials, alleging that the board of education had refused to recognize the association as the legitimate negotiating agent for the teachers and requesting that the court rule that the board "may enter into an agreement with a teacher organization" to negotiate matters of "mutual concern." The association also alleged that the refusal of the board to meet with the teachers prevented the parents and taxpayers from obtaining the best possible education for the children since educational problems and methods are properly of concern to the teaching profession, and that the board had thus abandoned the "major expertise applicable." It was also alleged that the refusal of the board to meet with the teachers' representatives constituted an unconstitutional abridgement of their rights to petition their government for redress of grievances. The teachers sought a declaration that the board must meet with the duly authorized representative of the teachers. The lower court granted the motion of the board of education to dismiss the petition but filed no opinion. The teachers association appealed.

The state supreme court determined that it did not have jurisdiction of the controversy since the alleged constitutional question of abridgement of the right of petition for redress of grievances had only been referred to and was not properly pleaded or preserved for purpose of appeal. The case was ordered transferred to a lower appellate court because of the lack of jurisdiction of the state supreme court.

New Jersey

Newark Teachers Association v. The Board of Education of Newark
270 A.2d 14
Supreme Court of New Jersey, October 26, 1970.

(See page 14.)

New York

Board of Education, Central School District No. 1 v. Helsby
314 N.Y.S. 2d 944
Supreme Court of New York, Erie County,
October 22, 1970.

The board of education of the Grand Island school district sought a judgment declaring that the Public Employment Relations Board (PERB) did not have jurisdiction to consider the dismissal of five probationary teachers. An improper practice charge was filed with PERB by the Grand Island Teachers Association charging that the school board improperly terminated the employment of the teachers "solely because of their activity in support of the Grand Island Teachers Association." The school board contended that it had absolute discretion to terminate probationary teachers. PERB, on the other hand, contended that it had exclusive jurisdiction to resolve in the first instance, the questions of fact raised by the charge and to order remedial relief if warranted.

The court found that PERB's jurisdiction and powers were conferred by the Civil Service Law and not the Education Law and that PERB did not have the power to enforce the rights of teachers to join or participate in an employee organization. The court held that the legislature, in enacting a law pertaining to the hearing rights of discharged teachers, expressly provided the remedies and penalties available to probationary teachers and left nothing to inference. The court concluded that PERB lacked jurisdiction in this instance and accordingly the request of the school board that PERB be enjoined from considering the dismissals was granted.

Board of Education, Union Free School District No. 3 v. Associated Teachers
310 N.Y.S.2d 929
Supreme Court of New York, Special Term,
Suffolk County, Part I, May 4, 1970.

The board of education sought a judgment declaring illegal certain provisions of the 1968-69 and 1969-70 negotiated contracts between it and the Associated Teachers. Four of these provisions involved the board's obligation to pay monetary benefits to the teachers, and the fifth concerned the authority of the board to subject certain actions

affecting tenure teachers to the grievance procedure. The board alleged that it did not have the power to bind itself to these provisions.

Disputes over items to be included in the 1969-70 contract were submitted to a fact-finding panel because of a breakdown in negotiations. Prior to this submission, the board had asked advisory opinions from the state comptroller and the state department of education on the legality of certain proposed items to be negotiated. Both departments had answered that the provisions in question could not legally be agreed to by the board. These opinions were submitted to and considered by the fact-finding panel. The position of the panel was that the department opinions were legal opinions, not judicial ones. If the provisions were incorporated into the agreement and later found illegal by an appropriate court, they could be separated from the remainder of the contract.

The first two provisions, present in both contracts, involved the liability of the board to pay for the replacement of dentures and eyeglasses which were not otherwise covered by Workmen's Compensation, and to pay for the repair or replacement of clothing damaged or destroyed in the performance of the teachers' duties. The state comptroller found no statutory authority for a union free school district to reimburse a teacher for these items. This opinion, the court found, failed to consider certain sections of the education law which provide statutory authority for school districts to reimburse teachers for expenses incurred in the performance of their official duties. The court held that this language was sufficiently broad to permit the type of reimbursement contemplated by the agreement, and, therefore, that the school board had the authority to bind itself in this instance.

The third provision related to payments to teachers, either in the form of salary increases (1968-69) or lump-sum reimbursement (1969-70) in either dollar amounts or percentage of cost of tuition for taking and completing graduate courses. The comptroller found no statutory authority for these payments. The court agreed, saying that if such payment was to be considered a salary increase, it must satisfy the definition of salary—compensation for services rendered. The court found that the taking of courses did not satisfy this definition unless a term or condition of employment required the teacher to take the courses as part of his over-all services rendered to the school district. The only statutory authority for straight reimbursement was for expenses incurred in the performance of official duties. There was no evidence in the record that indicated that the school district required additional graduate studies as a condition of employment. This action of the board, in agreeing to the payment, was held to be *ultra vires*.

The final question of monetary payments involved the payment of a retirement award during a teacher's final year of teaching prior to retirement. The comptroller had found the payment illegal. The court said that the payment was not a violation of the equal protection clause since a board of education is granted broad authority to determine and agree to teachers' salaries above the state-mandated minimum so long as there is no discrimination by sex. The court found the final-year increase to be additional compensation that was not arbitrary since it was paid to all eligible teachers; nor was the payment unreasonable or an unconstitutional gift as ruled by the comptroller. To receive the increased payment a teacher had to render full and complete teaching service during the final year. The court held that this was a term and condition of employment that the board had full authority to agree to and bind itself.

The final disputed provision involved administrative actions that affected tenure teachers being made subject to the grievance procedure of the agreement. In resolving this issue the court considered the statute establishing a mandatory employees' grievance procedure for all units of local government, including school districts, and the definition of a grievance therein, the teacher tenure law, and the Taylor law. Thereupon, the court concluded that any action in the nature of disciplinary proceeding affecting a tenure teacher, or the dismissal or removal of a tenure teacher could not be made subject to the grievance procedure, but that actions relating to the supervision of such teachers, including non-disciplinary transfers or adverse performance evaluation would appear to be proper subjects for the procedure.

Board of Education, Union Free School District No. 3 v. National Education Association
311 N.Y.S.2d 370
Supreme Court of New York, Special Term,
Suffolk County, May 13, 1970.

The Board of Education of Union Free School District No. 3, Town of Brookhaven, sought a preliminary injunction against the New York State Teachers Association (NYSTA) and the National Education Association (NEA) in connection with a release by NYSTA of an "urgent advisory." This release stated that the school district "was not a fit place for teachers to work and called 'upon all teachers in the State not to make application or take employment in [the district] until the current situation between [the school district and the local teachers association] is resolved.'" The school board claimed that more than 100,000 teachers in the state are members of NYSTA and that as such they are subject to censure, suspension, or expulsion if they fail to comply with the "urgent advisory." The school board asked that the two organizations be enjoined from continuing the advisory in effect and that they be required to advise all local associations and all others to whom the advisory had been distributed that it was of no force and effect; and that they further be enjoined from imposing any sanctions against the board of education and threatening any sanctions against any person applying for employment with the board.

NYSTA contended that its membership was little more than half of the public-school teachers in the state and that there is no risk of censure to teachers who do not follow the recommendations of the urgent advisory. The Association also produced newspaper articles in which the district principal was quoted as saying that there were sufficient applications for employment to fill all vacancies in the school district.

Under the total circumstances of the case the court found that there was not a sufficient showing of damage to

justify the issuance of a preliminary injunction. There was no threat by NYSTA to discipline its nonconforming members, and in fact the organization had rejected a formal resolution that it do so. Lastly, it appeared to the court that the rights of the associations under the First Amendment would be impaired by the issuance of a preliminary injunction. Such an injunction, the court said, should issue only when the potential harm to the board of education was substantial and imminent, and this did not appear to be the case here. The request for the temporary injunction was therefore denied.

Board of Education, Union Free School District No. 27 v. West Hempstead Chapter Branch II of the New York State Teachers Association
311 N.Y.S.2d 708
Supreme Court of New York, Special Term, Nassau County, Part I, May 18, 1970.

The school board sued to enjoin the teachers association from issuing news releases or making public statements in violation of the contract between the parties, for a judgment requiring that the grievance procedure in the contract be used, and for damages. The teachers association had sent telegrams to the superintendent, the high-school principal, and members of the board of education, demanding of each of them his resignation for "full and sufficient reasons known to you."

The grievance procedure that the board believed the teachers association should have utilized instead of the public statements, granted the right to present a grievance only to an individual and defined *grievance* to be "a complaint concerning the violation, application or interpretation of a stated specific provision of this agreement as to a matter expressly covered by this agreement." The reasons that the association demanded the resignations did not concern the violation, application, or interpretation of a stated specific provision of the contract. Accordingly, the court granted the motion of the association to dismiss the action.

Friedman v. Union Free School District No. 1, Town of Islip
314 F.Supp. 223
United States District Court, E.D. New York, June 15, 1970.

The president of the Bay Shore Classroom Teachers Association sued the school district on behalf of himself and all other teachers in the district. The suit charged that section 11F-21 of the Administrative Manual of the district barring all but "routine internal distributions" to teachers of materials of the Association was unconstitutional. *Routine internal distributions* was defined as notices of meetings, elections, election results, and social events but did not include newsletters, position papers, or other communications which did not concern themselves with the routine operation of the exclusive negotiating agent. The policy was interpreted so as to bar not only distribution in teachers' mailboxes of the banned material but also distribution at all times in the halls, lunch-rooms, parking lots, or any place on school premises. The teachers distributed copies of a magazine through faculty mailboxes, thus precipitating this action.

The Association charged that the rule deprived teachers of their constitutional right to free speech in violation of the First and Fourteenth Amendments. The school board maintained that it had the inherent authority to promulgate and enforce such rules and regulations. It argued that its policy was reasonable because it prevented the school board from becoming a censor of material distributed on school premises. There was a further statement of the board's rationale behind the provision that the policy preserves order in the schools and prevents disruption during periods of negotiation. There was no specific allegation by the school board that any disruption had ever taken place.

The court found to be without merit the contention of the board that it had an absolute vested right as owner of the school premises to direct how its facilities would be used. While the board was the owner of the school property, the court said, that alone could not justify its promulgation of the regulation in question. Turning to the reasonableness of the regulation, the court found that the rationale of the board that distribution caused tension and turmoil concerning negotiations, did not comport with the *Tinker* decision in which the Supreme Court said that mere fear of disturbance will not support a regulation that impinges upon First Amendment rights. The court also said that the board could accomplish its objective of not being a censor by permitting distribution of all material that did not in fact substantially interfere with or disrupt the school's operation. The court declared the regulation void on its face and in its application as an overbroad prohibition of the First Amendment rights of public-school teachers, and enjoined its enforcement.

The court also answered two other contentions of the board, that this was a matter for arbitration and that the teachers were estopped from challenging the regulation since it was incorporated by reference in the contract that they had negotiated. The teachers had attempted to have the administrative provision repealed during negotiations and had been unsuccessful and were unwilling to give up other items to obtain removal. The court said that the teachers could not be put in a position of having "to pay (literally and figuratively) for their First Amendment rights. This is a price that the state is constitutionally prohibited from extracting." In view of this, the court, not arbitration, is the proper forum to determine the constitutionality of the regulation.

Helsby v. Board of Education of Central School District No. 2 of the Town of Claverack
312 N.Y.S.2d 355
Supreme Court of New York, Appellate Division, Third Department, May 27, 1970.

(See *Teacher's Day in Court: Review of 1969*, p. 41.)

The Public Employment Relations Board (PERB) petitioned the court for a judgment enforcing its order directing the board of education to reinstate a teacher. The trial court denied relief and PERB appealed.

The teacher had been denied tenure after having served a three-year probationary period despite the recommendation for tenure by the superintendent of schools. During her employment the teacher had served as president of the

local teachers association and had taken part in professional negotiations with the board of education. The teacher filed a complaint with PERB alleging that her employment had been terminated as an act of reprisal because of her organizational activities.

The PERB held a hearing and found that the teacher had been denied tenure because of her activities in the teachers association. The school board was ordered to reinstate the teacher and to compensate her for lost pay. The school board asked the court to dismiss the PERB petition and to set aside the PERB findings on the ground that the PERB was without jurisdiction to consider and decide an alleged reprisal, and that the procedure followed by the teacher was contrary to the state tenure law.

The question on appeal was whether the Taylor Act (negotiation statute) gave PERB the right to regulate unfair labor practices. The appellate court concluded that PERB did not have the authority to order the board of education to reinstate the teacher unless such authority was expressly given in the Taylor Act. Since it was not, PERB exceeded its jurisdiction. The court said that if the reason for the dismissal of the teacher was her "association activities" in violation of her rights under the Taylor Act, her remedy was under the Education Law. The judgment of the lower court was affirmed.

Lawson v. Board of Education of Vestal Central School District
307 N.Y.S.2d 333
Supreme Court of New York, Broome County, February 2, 1970.

Officers and members of the Vestal Teachers' Association brought an action seeking an order to restrain the board of education from making payroll deductions against striking teachers under the Taylor Law. That law provides for payroll deductions at twice the daily rate of pay for each day missed because of a strike. The teachers alleged that the determination of the superintendent that resulted in the deductions was incorrect in that the notice sent to the teachers did not satisfy the provisions in the Taylor Law and that the portion providing for the deductions was unconstitutional.

As to the first allegation the court ruled that the notice substantially complied with the statute and was sufficient.

The court then considered the contention of the teachers that a portion of the act relating to payroll deductions against striking teachers was unconstitutional on the grounds of a denial of due process of law. The court noted that the statute provides that where it has been determined that an employee has violated the statute and has received notice of the determination, he may file an affidavit supported by documentary proof to show the contrary. The statute additionally provides that if the chief executive officer decides that the affidavit raises a question of fact which would exonerate the employee, a hearing officer shall be appointed to determine whether or not the employee did violate the statute. It was the opinion of the court that if there was an issue of fact, under the statute a hearing officer must be appointed. Further, the court said the statute specifically provides that any decision of that officer is reviewable in the courts. Under these circumstances, the court concluded that the teachers were not denied due process and the petition was dismissed.

Teachers Association, Central High School District No. 3 v. Board of Education, Central High School District No. 3, Nassau County
312 N.Y.S.2d 252
Supreme Court of New York, Appellate Division, Second Department, June 22, 1970.

The teachers association applied to the court to confirm an arbitrator's award of payment for accumulated sick leave to the estate of a deceased teacher. The trial court dismissed the application (305 N.Y.S.2d 724 (1969)) and the association appealed. The contract between the association and the board of education provided that the estate of a deceased teacher was entitled to payment for 20 percent of accumulated personal sick leave for service up to and including 15 years. The trial court held that the provision violated the section of the state constitution barring a municipal corporation from making gifts of public funds to private citizens. This constitutional barrier has been held not to apply to pensions, vacations, and other inducements to continued employment. In the opinion of the appellate court, sick leave as a condition of employment was in the same category as the other inducements since the payment for unused sick leave discourages unnecessary absences and influences the teachers to continue in employment. The court concluded that payment for unused sick leave when an employee dies in service was not a violation of the state constitution.

The board of education argued also that the payment for unused sick leave was beyond its power, and relied on a letter from the state department of education to that effect. The appellate court disagreed with this interpretation, noting that a board of education is granted statutory authority to make rules and regulations governing leaves of absence with or without pay. Also, the state law requiring collective bargaining intended that the agreements between school districts and teachers associations provide for the terms and conditions of employment. Taking these provisions together, the appellate court concluded that the legislature intended to place the responsibility for making agreements for the hiring and compensation of teachers on the school districts and bestowed ample powers on the districts to deal extensively with the conditions of employment, including the granting of sick leave.

Concluding that the provision for the payment of unused sick leave was both constitutional and within the power of the board of education, the appellate court reversed the decision of the lower court and confirmed the awards of the arbitrator.

Wakshull v. Helsby
315 N.Y.S.2d 371
Supreme Court of New York, Appellate Division, Third Department, November 10, 1970.

The State University Federation of Teachers sought review of a decision of the Public Employment Relations Board (PERB) which in a representation dispute established

a state-wide negotiating unit for professional employees of the state university system. The union had proposed separate units on each campus to resolve local issues and a council of local representatives to negotiate with the central administration of the university on state-wide issues. After lengthy hearings the director of representation decided and PERB affirmed a state-wide unit made up of both academic and administrative professional employees.

The union first urged that the definition of a state-wide unit was arbitrary, capricious, and without substantial evidence. The court disagreed and found substantial evidence to support PERB's determination. The court also found no merit in the union's contention that associate and assistant deans should not be in the negotiating unit. The court held that the fact that there may be some conflict of interest between the deans and the faculty, owing to the supervisory duties of the deans, does not compel the exclusion of the deans from the unit. The final contention was that PERB violated one of its own rules by permitting intervention in the proceedings by the Faculty Senate since it was not an employee organization under the statute. In rejecting this contention, the court said that even if the Faculty Senate was not a bona fide employee organization, its individual members were public employees who are permitted to intervene under PERB rules.

The decision of PERB relating to a state-wide negotiating unit for university professional personnel was affirmed.

Zeluck v. Board of Education of the City School District of the City of New Rochelle
307 N.Y.S.2d 329
Supreme Court of New York, Westchester County, January 6, 1970.

Officers and members of the New Rochelle Federation of Teachers brought suit to enjoin the school board from making payroll deductions against teachers who had engaged in a strike. Their petition alleged that the Taylor Act which regulates relations between teachers and the employing board was unconstitutional. The Attorney General of the state of New York sought to dismiss the petition.

Plaintiffs claimed a denial of equal protection because the Taylor Act permits disparate treatment between public and private employees. The court rejected this claim since the New York courts had previously upheld the act against such claim. The plaintiffs next contended that the Taylor Act infringed upon free speech and association because it prohibited public employees from engaging in a strike. The court disagreed with this contention also. It stated the courts have repeatedly held that the right to strike is not essential to free association, that this right is subordinate to the right of the state to prohibit strikes. Thus, the strike prohibitions in the act were no grounds for holding the act unconstitutional.

The plaintiffs argued further that the provision of the act for payroll deductions of two days' pay for each day the employee is found to have engaged in a strike is unconstitutional in that it constitutes a bill of attainder. The court found this contention to be without merit. The statute requires that notice of charges must be served upon each teacher who is found to have engaged in a strike. The accused employee may object to any such determination by filing with the chief executive officer an affidavit and supporting proof. The school official must then determine the case, and any such determination is reviewable in the courts. The court ruled that these procedures constituted sufficient due process. Motion of the attorney general to dismiss the petition was granted.

North Dakota

State v. Heath
177 N.W.2d 751
Supreme Court of North Dakota, June 2, 1970.

Three teachers appealed their convictions of criminal contempt of court under a state statute which provides that a court may punish for criminal contempt any person guilty of "willful disobedience of any process or order lawfully issued or made by it."

The contempt citations arose after the teachers picketed in violation of a permanent restraining order enjoining them and all other teachers from "conducting any picketing, work stoppage, or strike against Minot Public School District No. 1." The individual teachers were restrained from continuing to remain unlawfully absent from their classrooms. Copies of the order were served upon each of the three teachers. Following the hearing on the contempt charge, the teachers were sentenced to 30 days in jail, which was suspended, and were fined $250 plus court costs.

In support of their appeals the teachers asserted that the contempt statute was unconstitutional in that it permitted their cases to be tried by a judge without a jury. The court stated that criminal contempt was a crime in every essential respect, and this being so, the question was whether or not it was a crime to which the jury provisions of the federal and state constitutions applied. In reaching its decision, the court relied on a decision of the Supreme Court of the United States which held that there must be a jury trial on a contempt charge if it is serious, but that petty contempts may be tried without a jury. The Supreme Court did not define petty or serious offenses, but went on to say that when the legislature has not judged the seriousness of the offense by fixing a maximum penalty, the best evidence of the seriousness is the penalty that actually was imposed.

In the instant case the state supreme court found that where the legislature had fixed the maximum penalty as 30 days in jail and a fine of $250 (which was the penalty imposed on the teachers), the charge amounted to petty criminal contempt. Therefore, the teachers were not entitled to a jury trial.

The next assertion of the teachers was that their conduct was protected activity under the federal and state constitutions which guarantee the right of speech and of peaceable assembly. The court found no merit in this contention, saying that the teachers had not seen fit to challenge the order of the court through orderly legal procedure but

rather chose to ignore it. The court stated that the overwhelming weight of authority in the country holds that the state may deny its employees the right to strike and may constitutionally enjoin peaceful picketing.

The final contention of the teachers was that the charge of criminal contempt was improper because the trial court did not find that the picketing impeded a governmental function or that the picketing was violent or other than peaceful. The court noted that the injunction that the teachers violated enjoined any picketing, work stoppage, or striking and required that the teachers return to their classrooms. The teachers violated this order, and the fact that the picketing was peaceful was immaterial. The court held that even peaceful picketing may be enjoined if it is used for the purpose of fostering an illegal strike against the government. The convictions of the teachers were upheld.

Oregon

Owens v. School District No. 8R of Umatilla County
473 P.2d 678
Court of Appeals of Oregon, Department 2,
August 13, 1970.

(See page 20.)

Pennsylvania

Legman v. School District of City of Scranton
263 A.2d 370
Supreme Court of Pennsylvania,
March 20, 1970.

(See *Teacher's Day in Court: Review of 1968*, p. 44.)

Following a teacher strike in Scranton, the teachers were granted an increase in salary. A private citizen brought suit challenging the right of the school board to grant a salary increase to the teachers who struck in view of a state statute that denied salary increases for three years to striking teachers. The trial court dismissed the complaint and an appeal was taken.

The state supreme court affirmed the dismissal and an amended complaint was filed. This was likewise dismissed and another appeal was taken. A 1968 amendment to the state law provided that "any contracts, rights, tenure rights, or other privileges of terms of employment heretofore in effect in any school district...are hereby ratified, confirmed and made valid, notwithstanding the terms or provisions of any other act or that the same may have been done without previous authority of law." The state supreme court held that this amendment effectively ratified the actions of the Scranton school district regardless of their legality at the time they were undertaken. The dismissal of the complaint was affirmed.

LIABILITY FOR PUPIL INJURY

Arizona

LaFrentz v. Gallagher
462 P.2d 804
Supreme Co rt of Arizona, In Division,
December 16, 1969.

A seventh-grade pupil sued his teacher, the principal, and members of the school board as well as the school district for assault and battery allegedly committed by the teacher. The court dismissed the case as to the members of the school board and the principal. The case was tried as to the teacher and the school district and resulted in a jury verdict in favor of these defendants.

The incident from which the suit arose began when the pupil was called out by the teacher on a close play at first base during a softball game. The student alleged that he walked away "kicking the dust" and the teacher grabbed him by the throat and slammed him into the backstop. The teacher's version was that the pupil used coarse language when called out and that the teacher pushed him and told him that his language was improper.

The pupil contended on appeal that the court was incorrect in not allowing in evidence prior similar acts committed against other pupils. The pupil conceded that the evidence was not admissible to prove assault and battery in this case, but the evidence should have been admitted to show knowledge, intent, and malice and for the purpose of showing the right to punitive damages. The court disagreed with these contentions since it was clear that for this purpose such evidence was not admissible.

The court said that it is a well-established principle in an action against a school teacher for damages for battery, that corporal punishment which is reasonable does not give rise to a cause of action for damages against the teacher. There was a conflict in the testimony and the jury had accepted the version of the teacher. Prior acts of assault upon other pupils at other times and under different circumstances could not be admitted as evidence on the question of whether the act complained of here was for the purpose of discipline and would have no validity to show malice toward the pupil.

Judgment of the trial court was affirmed.

California

Dailey v. Los Angeles Unified School District
470 P.2d 360
Supreme Court of California, in Bank, June 25, 1970.

Parents of a deceased high-school student brought a wrongful death action against two teachers and the school district. The trial court directed a verdict in favor of the teachers and the school district. The appellate court affirmed (84 Cal.Rptr. 325, 1970) and the parents appealed.

The accident giving rise to this action occurred during the lunch period as the deceased student and three of his friends proceeded toward the gymnasium building where their next class was to be held. They stopped outside the building where the student and one friend engaged in "slap boxing" which is a form of boxing using open hands rather than clenched fists. Although the students appeared to be enjoying the activity and no hard blows were struck, the student fell backwards and suffered a fractured skull which resulted in his death a few hours later.

The parents maintained that the district was negligent in failing to supervise the students during the lunch hour. According to the plan of the school district, the physical education department had general supervision of the gymnasium area. The chairman of that department, who was one of the defendants, testified that while his department had supervision duties in the area, he had never been told to make sure that some particular teacher was to supervise on a particular day. He also testified that there was a teacher on duty in the "gym office" during the lunch period on that day; however, he was eating his lunch and preparing lessons and not sitting in a position to observe the accident.

The sole question on appeal was whether the motion for a directed verdict was properly granted by the trial court. Under applicable case law, the granting of the motion would have been proper if "giving to plaintiff's evidence all the value to which it is legally entitled, herein indulging in every legitimate inference which may be drawn from that evidence, the result is a determination that there is no evidence of sufficient substantiality to support a verdict in favor of the plaintiff if such a verdict were given."

Before deciding whether the evidence was sufficient to support a verdict in favor of the parents, the court considered what duty, if any, is owed by the school district to students on school grounds. The court noted that "California law had long imposed on school authorities a duty to 'supervise at all times the conduct of the children on the school grounds and to enforce those rules and regulations necessary to their protection.'" The standard of care required in carrying out this duty, the court said, is that degree of care which a person of ordinary prudence would use under the same or similar circumstances. Lack of supervision or ineffective supervision could, under California law, constitute a lack of ordinary care by those responsible for student supervision. Also, under the California Government Code, a school district is vicariously liable for injuries proximately caused by the negligent supervision.

In the opinion of the court the fact that the student's death was caused by his own boisterous behavior would not preclude a finding of negligence on the part of the school authorities. Adolescent high-school students are not adults and should not be expected to exercise the same degree of discretion, judgment, and concern for the safety of themselves and others as is associated with full maturity.

The court then came to the question of whether the evidence was sufficient to support a finding of negligent supervision. There was evidence that the department head had failed to develop a comprehensive schedule of supervising assignments and had neglected to instruct his subordinates as to what was expected of them while they were supervising. There was also evidence that indicated that the teacher on duty had not devoted his full time to supervising but ate lunch, talked on the phone, and prepared future class assignments. Neither of the two teacher-defendants heard or saw a 10-minute slap boxing match that attracted a crowd of 30 spectators and took place within a few feet of the gymnasium building. The court said that "from this evidence a jury could reasonably conclude that those employees of the defendant school district who were charged with the responsibility of providing supervision failed to exercise due care in the performance of this duty and that their negligence was the proximate cause of the tragedy that took Michael's life." The fact that another student's misconduct was the immediate precipitating cause does not compel a conclusion that negligent supervision was not the proximate cause of the student's death.

The court concluded that there was evidence of sufficient substantiality to support a verdict in favor of the parents and that the trial court erred in granting the motion for a directed verdict in favor of the school district and the two teachers. That judgment was reversed.

Colorado

Arnold v. Hafling
474 P.2d 638
Colorado Court of Appeals, Division II,
September 9, 1970.

A high-school student and his parents brought suit against a coach and the principal to recover damages for injuries the student suffered at a school outing. The student had broken his leg when he was pushed from a retaining wall by another student. The injury occurred during a high-school lettermen's outing at the coach's mountain cabin. The plaintiffs claimed that the coach and the principal had condoned the activities leading up to the accident and were negligent in their supervision.

The trial court had granted the motion of the coach and the principal for a directed verdict against them based on another Colorado decision denying relief to an elementary-school child hurt on a playground by another pupil. The plaintiffs appealed.

In affirming the judgment, the appellate court said that in the present instance the facts supporting the trial court verdict were even stronger than in the judicial precedent which was correctly applied. In the case at hand the students were between 16 and 18, and it would be expected that they would be more responsible than elementary-school children. Also, in the prior case the primary reason for the teacher being on the grounds was to supervise the children, while in this instance the coach and the principal were present to host the outing. The appellate court agreed with the trial court that the evidence was insufficient to submit the case to a jury.

Iowa

Sprung v. Rasmussen
180 N.W.2d 430
Supreme Court of Iowa, October 13, 1970.

The Riceville Community School District appealed from the trial court decision in a pupil injury case. The trial court had overruled the school district motion to dismiss the action for failure to comply with the statutory notice provisions. The high-school senior in this case had been injured in physical education class while performing a tumbling exercise. The parties agreed that he was incapacitated by his injuries for 87 days. Notice of the injury was given to the school district 136 days after the accident or 49 days after the student recovered. In response to the suit brought against the school district and the physical education teacher in charge at the time of the accident, the district pleaded the statute of limitations. State law provides that notice must be given within 60 days of the injury and includes a provision stating that "the time for giving such notice shall include a reasonable length of time, not to exceed ninety (90) days, during which the person injured is incapacitated by his injury from giving such notice."

In its appeal, the school district maintained that the duty of giving notice rested on the father of the student and not the student. The appellate court disagreed, noting that the statute expressly imposes on the injured party the duty of giving notice. The school district also maintained that the total allowable time for giving notice was 60 days if the party was not incapacitated and 90 days over-all otherwise, and charged that it was error for the trial court to interpret the statute to allow the injured party up to 150 days to give notice. A literal reading of the provision led the court to conclude that the legislature intended to permit an injured party to defer the services of the 60-day notice of loss or injury for a period of 90 days or such shorter period as the party might be incapacitated. Under this interpretation, a 150-day maximum period was afforded. Since in this case the pupil was incapacitated for 87 days and notice was served 49 days later, the appellate court held that notice was served in conformity with the statutory requirement. The decision of the trial court was accordingly affirmed.

Louisiana

Mogabgab v. Orleans Parish School Board
239 So.2d 456
Court of Appeal of Louisiana, Fourth Circuit,
July 15, 1970; rehearing denied, October 5, 1970.

The parents of a deceased high-school student brought a wrongful death action against the parish school board, the head coach, an assistant coach, the principal, the superintendent, the supervisor of the health, safety, and physical

education division, and an insurance company. The trial court dismissed the action without written reason and the parents appealed.

The parents alleged that the death of their son resulted from the negligence of the defendants in failing to perform their duty of providing all necessary and reasonable safeguards to prevent accidents, injury, and sickness of football players and in failing to provide prompt treatment when such occurs. Although some of the facts were in dispute, it appeared that the student became ill at football practice at 5:20 p.m. and that shortly thereafter was put on the team bus to return to the high school. The boy was laid on a floor of the high school and covered with a blanket. An unsuccessful attempt was made to give him salt water. At 6:45 p.m. his mother was called and she telephoned a doctor who arrived at the school at 7:15. The boy was immediately taken to a hospital where treatment was begun, but his condition worsened and he died at 2:30 a.m. the next day. The cause of death was heat exhaustion and heat stroke.

One of the doctors who treated the student testified that covering a person suffering with heat exhaustion with a blanket is the wrong thing to do and that time is of the essence in such a case and quick treatment is necessary so that the processes caused by the illness do not reach an irreversible state. The doctor did not give a positive answer that the boy would not have died had he received immediate medical attention, but said that his death would have been much more unlikely had proper medical treatment been instituted when the boy first staggered and informed the coach that he was ill.

The appellate court said that it was plain that the two coaches present were negligent in denying the boy medical assistance and in plying an ill-chosen first aid, and that the parents had proved this negligence. What was not proved was that the boy would have *certainly* lived if brought to a doctor sooner and for what *precise* period of time the condition remained reversible. The court did not think that the law demanded such flawless precision and said that taken as a whole the record supported the premise that it is more likely than not that the student would have survived with reasonably prompt medical attention.

The court held that the record did not support a negligence charge against the principal, the supervisor of the health, safety, and physical education division, and the superintendent since they were unaware of the happenings. The claim against the insurance company was no longer before the court. The court concluded that a claim against the two coaches and the school board had been sustained and awarded each of the parents $20,000, besides funeral and medical expenses. To this extent the judgment of the trial court was reversed.

Maryland

Segerman v. Jones
259 A.2d 794
Court of Appeals of Maryland, December 9, 1969.

A fourth-grade teacher left the classroom for a few minutes on school business while the class was engaged in a program of calisthenics. While the teacher was gone, one little boy moved from his assigned place and performed the push-ups in an improper manner so that his feet hit a girl on the head. As a result, the girl's two front teeth were badly chipped. Suit was brought against the boy and the teacher. Suit was dismissed as to the boy, but a judgment was rendered against the teacher, who appealed.

The evidence showed that the exercises were being performed in the children's regular classroom according to directions given on a record with which the children were supposedly all familiar. The teacher had played the record through once for the children to hear and then saw that the exercises were properly under way before departing the classroom. There was also evidence that the boy who caused the injury was a physically active child who required somewhat more supervision than other pupils.

The appellate court concluded that the absence of the teacher from the classroom was not, as a matter of law, the proximate cause of the pupil's injury. The court said that even the teacher's presence could not have prevented the injury, nor was the injury reasonably foreseeable. Rather, the injury was caused by an intervening and wholly unforeseen force—that the boy left his assigned place and did not do the push-ups as he had been instructed to do them.

Judgment against the teacher was reversed.

Michigan

Cody v. Southfield-Lathrup School District
181 N.W.2d 81
Court of Appeals of Michigan, Division 2,
June 26, 1970.

An injured high-school student appealed from the trial court judgment in favor of the school district. The girl had fallen and had broken both arms while performing a gymnastic exercise on a "mini-trampoline" in her physical education class. The school district had raised the affirmative defense of governmental immunity and the trial court had granted the district's motion for summary judgment.

The appellate court found that under the common law doctrine of immunity the school district was immune from liability for its negligent acts while in pursuit of a governmental function. The court then considered whether conducting the physical education class was a governmental function and concluded that it was since state law mandated that physical education programs be conducted in the schools and Michigan courts have liberally determined the scope of activities within the physical education program.

However, even if the state was engaged in a governmental function, it was liable by law for torts arising out of a dangerous or defective condition of a public building. In this case the accident occurred in a public building, but the appellate court agreed with the trial court, holding that since no allegation was made that the "mini-trampoline" was improperly manufactured, negligently erected, or dangerously maintained, this exception to immunity was not applicable. The action was based solely on the alleged negligence of the supervising teacher and the school principal.

Finally the appellate court concluded that the fact that the school district carried liability insurance did not preclude the district from asserting the defense of governmental immunity. The court noted that school districts must protect themselves in instances of injuries resulting from motor vehicle accidents and defective buildings where immunity has been statutorily abrogated.

The judgment of the trial court in favor of the school district was affirmed.

Oregon

Hutchison v. Toews
476 P.2d 811
Court of Appeals of Oregon, Department 2,
November 16, 1970.

An injured high-school student appealed from the lower court judgment, dismissing his suit against School District No. 4, Jackson County, and the school chemistry teacher. The student had been injured when a cannon fueled by explosives made by the student and a friend exploded prematurely burning both hands of the student. The trial court had dismissed the case, based on the school district's defenses of contributory negligence and assumption of risk on the part of the injured student.

It appeared that the injured student and his friend had "badgered" the chemistry teacher for potassium chlorate to use in fireworks experimentation. After refusing several times the teacher gave in and gave the students the powdered chemical. A few days later, the friend, without the teacher's knowledge, took the same chemical in crystalline form from the chemical storeroom. The injured student's complaint charged that the teacher "supplied" him with potassium chlorate. The two students testified that it was the crystalline form of the chemical which was used to make the explosive.

There was also evidence that the students had a booklet from which they were preparing the mixture and that the instructions carried warnings about the dangerousness of the chemical, and that the chemistry teacher to whom they had shown the booklet cautioned them and told them that they should have supervision. The students testified that they knew that the booklet said that the formula for using potassium chlorate was very powerful.

The appellate court concluded from all of the evidence that the injured student had knowledge of the risk involved in the experiment and that he was contributorily negligent as a matter of law. The decision of the trial court was affirmed.

RETIREMENT

Arkansas

Pyle v. Webb
458 S.W.2d 418
Supreme Court of Arkansas, October 12, 1970.

A retired teacher brought a mandamus action against the Board of Trustees of the Teacher Retirement System and its executive director, asking the court to declare a 1969 state law ineffective as to him. The former teacher was employed by a federally funded state agency and had been receiving teacher retirement benefits since 1964. The 1969 law prevented retirants from drawing teacher retirement benefits while on the public payrolls. The teacher argued that his rights had already become vested and that the act was ineffective as to him. The lower court granted the writ and the Board of Trustees appealed.

The state supreme court noted that it had previously held that chancery courts were without jurisdiction to enter writs of mandamus. Therefore, the action was dismissed without prejudice so that the retired teacher could pursue any other legal remedies that he might have.

Illinois

Sarff v. Teacher's Retirement System
262 N.E. 2d 504
Appellate Court of Illinois, Fourth District,
October 29, 1970.

The lower court had affirmed the action of the Illinois Teachers' Retirement System in denying an applicant a pension and in tendering a refund of all of his contributions. The former teacher then appealed. The teacher had taught for five years and then entered the military service during World War II. He continued to make contributions to the retirement system for some 20 years ending in 1963. At that point he would have qualified for benefits if he had been old enough to be eligible to receive them. In 1964, he was retired from the Air Force with "military disability retirement" owing to a heart condition.

The retirement sytem had denied him benefits, based on a state statute which provides that "all service credits hereinabove described shall be effective only if not used for credit in any other statutory tax-supported public employee retirement system with the exception of the Social Security Act, as amended." The appellate court believed that it was the intention of the state legislature to prohibit service credits from being used twice to obtain two retirement pensions. However, under federal law a military disability pension may be warranted without the use of any service credits. There had been no finding by the retirement system or the trial court as to whether or not the service credits in the teachers' retirement system were used by the applicant in obtaining his military disability pension.

The decision of the retirement system and the trial court was reversed, and the matter was remanded to the system for a hearing to determine the facts in the case and for a decision to grant or deny benefits from the teachers' retirement system in accordance with this opinion.

Kansas

Wiley v. Board of Education of the City of Wichita
470 P.2d 792
Supreme Court of Kansas, June 13, 1970.

A former school teacher appealed from a lower court finding that her retirement from the Wichita school system was voluntary and not, as she claimed, forced in violation of the state teacher tenure law. She was a tenure teacher with 35 years' experience and had a contract for the 1965-66 school year. In January 1965, the board of education adopted a policy under which the teacher, then age 68, was subject to retirement. This policy permitted employment on a year-to-year basis to age 70 by agreement between the teacher and the board. In December 1965, the teacher received a notice informing her that she was subject to retirement. Enclosed with the notice was a form for a request for re-employment. She signed the form and returned it. Prior to any action by the school board on the re-employment request, the teacher wrote a letter to the superintendent withdrawing her request for re-employment and stating that she wished to be retired at the end of the school year in order to join the Peace Corps. Her intention to retire was acknowledged by the assistant superintendent, and the board of education formally acted on the request. The teacher then continued with her retirement plans by selling her house, applying for retirement benefits, and entering a training course for the Peace Corps.

According to her testimony, the teacher was unable to accept the Peace Corps assignment, and in August 1966 applied for and received employment elsewhere. The evidence showed that she did nothing inconsistent with her intention to retire from the Wichita system until she brought this action in October 1967, challenging the validity of the retirement policy of the board of education.

In view of the teacher's many acts in carrying out her intention to retire, the appellate court found that there was substantial competent evidence to support the decision of the trial court that her retirement was voluntary. The judgment of the lower court was affirmed.

New Mexico

Shepard v. Board of Education of Jemez Springs Municipal Schools
470 P.2d 306
Supreme Court of New Mexico, April 27, 1970.

The board of education sought to involuntarily retire a tenure teacher on July 18, 1968. The teacher had attained age 62 on July 4, 1968. On July 26, 1968, after having received notification of retirement, the teacher wrote to the board accepting a contract for the 1968-69 school year. On October 21, 1968, she was notified by the local board that the State Educational Retirement Board had approved the application of the local board to retire her as of August 1, 1968. The teacher then applied to the court for and was granted a writ of mandamus ordering the local board to tender her a contract for the 1968-69 school year. The local board appealed from the grant of that writ.

The question on appeal was whether or not the teacher had exhausted her administrative remedies prior to seeking judicial relief. The court said that the action of the Educational Retirement Board merely determined that the teacher was eligible for retirement benefits. The action sought by the teacher pertained to her continued employment and required a factual determination by the local board of what was the last day of the school year. From this determination an appeal could be taken to the state board and then to the courts.

The appellate court ruled that mandamus was not a proper action in this case because of the failure of the teacher first to seek a hearing before the local board and then to exhaust her other administrative remedies. Therefore, the lower court did not have jurisdiction in the case, and its order granting the writ was reversed.

Wisconsin

Ruhmer v. Wisconsin State Teachers Retirement Board
180 N.W.2d 542
Supreme Court of Wisconsin, November 3, 1970.

The retirement board denied a teacher disability benefits. The trial court reversed its decision and the retirement board appealed. The teacher had taught grade school in Wisconsin for about 35 years. In November 1966, she suffered a stroke and did not return to teaching until September 1967. She resigned in December 1967 because of the effects of the stroke, and in January 1968 applied for a disability retirement annuity.

Shortly afterward a supervisor of the disability determination unit (unit) wrote to the teacher advising her of what information was needed to proceed with her claim. The teacher submitted a doctor's certificate stating that she was unable to remain employed as a teacher because of the effects of the stroke. She also filed an application for a total disability annuity. The unit then determined that she was not sufficiently disabled from engaging in substantial gainful employment and that she was ineligible for the annuity. The teacher responded to this determination by inquiring "what I can do further regarding disability claims." The board replied by stating that nothing further could be done since state law requires that an applicant must be unable to engage in *any* gainful employment, not just teaching.

In May 1968, the teacher submitted a second medical letter which stated that she was totally and permanently disabled for *any* gainful employment. The unit again determined that she was ineligible for a disability annuity. The retirement board affirmed this determination as they were bound to do by law.

The basic issue on appeal was whether the statutory procedures for the application and determination of disability under the state teachers' retirement law as followed in this case deprived the teacher of due process. State law governing administrative procedure and review provides for a full, fair, and public hearing after notice in a contested case. It was the opinion of the court that if the initial determination by the unit was binding on the board, a contested case was established. Since there was no provision for a hearing in the retirement statute, the court said, one was necessary only if required by the general concept of procedural due process governing administrative proceedings. The court concluded that since the provision in statute applicable to unit determination of eligibility for disability benefits did not provide for a hearing and an initial determination of ineligibility was binding on the retirement board, the statutory provision denied the teacher due process and was invalid. The appellate court found no merit in the retirement board's contention that the teacher never requested a hearing and, therefore, a hearing was never denied. The appellate court noted that the teacher was sent a letter saying that nothing more could be done with regard to her application.

The decision of the trial court was affirmed. In the opinion of the appellate court, that decision required that at some stage of the proceedings a full and complete public hearing be held, at which time an applicant has a right to be present, to be represented by counsel, and to offer testimony in evidence. Consequently, the teacher's rights to the benefits she claims are not foreclosed until a hearing is held and proper findings are made.

CIVIL RIGHTS

Minnesota

McConnell v. Anderson
316 F.Supp. 809
United States District Court, D. Minnesota,
Fourth Division, September 9, 1970.

A male college librarian applied for employment with the University of Minnesota; this resulted in his employment as head of the Cataloging Division at the St. Paul Campus Library being confirmed by letter. No formal contract was ever perfected, however, because the Board of Regents never came forth with the necessary formal approval. Shortly after moving to Minnesota, the librarian applied to the appropriate authority for a license to marry another male. Both freely admitted to the news media that they were homosexuals. The incident drew substantial publicity in the local press resulting in the denial of employment by the regents.

The librarian brought suit against the university charging violation of his constitutional rights. He sought injunctive relief. A representative of the regents testified that it was the first time in at least 10 years that a favorable recommendation of the academic staff had been rejected and that it was the position of the regents that the librarian's professed homosexuality connotes to the public that he engages in conduct that constitutes a crime under state law and that the university cannot condone the commission of criminal acts by its employees. The librarian testified that although he lives with his intended "spouse," he has never committed a sexual act that would constitute a crime under state law, never advocated the practice of homosexuality by anyone else, or induced any other person to engage in its pursuits.

The court noted that no attack was made on the plaintiff's competency as a librarian nor was there any attempt to show that his sexual tendencies would affect the performance of his duties or his efficiency; that the university did not have any rules or regulations regarding homosexuals nor did the application form completed by the librarian inquire into his sexual habits; that the librarian would not be in a position to handle or be exposed to information involving national security or "classified" information and in any event the librarian was very open about his homosexuality and could not be subject to blackmail for it.

The question before the court was whether, in the absence of any controlling statute, it is a violation of the librarian's constitutional rights to refuse him employment because of his proclaimed homosexuality. The court could find very few cases involving the question, but did conclude that to justify dismissal from public employment or, as in this case, to reject an applicant for public employment, "it must be shown that there is an observable and reasonable relationship between efficiency on the job and homosexuality." Since here the librarian had never been permitted to perform his duties, the regents were necessarily speculating and presuming as to the claimed effects of his homosexuality on the performance of his duties as an employee, the court said. The librarian would not be exposed to children of tender years whom he conceivably could influence. The court said further that what he does in his private life should not be his employer's concern unless it can be shown to affect in some degree his efficiency in the performance of his duties. The court concluded by stating that the librarian "does not have an inalienable right to be employed by the University but he has a right not to be discriminated against under the Fourteenth Amendment due process clause. He has a constitutional right that the terms of his public employment which he must meet be 'reasonable, lawful and nondiscriminatory.'" The injunction requested by the librarian was granted.

Mississippi

Trister v. University of Mississippi
420 F.2d 499
United States Court of Appeals, Fifth Circuit,
October 9, 1969; rehearing denied and rehearing
en banc denied November 20, 1969.

Two faculty members at the University of Mississippi School of Law appealed from the lower court decision dismissing their complaint. The professors had brought suit against the university and its officials, alleging that they had been denied their civil rights and seeking a declaratory judgment that the acts of the university were illegal and unconstitutional. They also sought an injunction that would require the university to offer them terms of employment that would allow them to participate in the North Mississippi Rural Legal Services Program.

The controversy arose because of the law school's contract with the Office of Economic Opportunity to provide legal services to the poor in an area around the university. One purpose of the program was to provide for clinical training of law school students, who would be assisted by lawyers engaged in active practice of law in that area. The two associate professors participated in the program as a part of their duties. In discussing their employment for the 1968-69 academic year, it was agreed by the two professors and the dean of the law school that part of their duties would consist of work with the program. During the spring of 1968, it became apparent that the program was not looked upon with favor by some political and civic groups. When the legal services program filed a school desegregation suit, the chancellor of the university was asked by the executive secretary of the board of trustees whether the law

school faculty members had participated in the suit. The chancellor replied to this question in the negative, but stated that he was immediately instructing the dean of the law school to terminate the school's connection with the program as soon as possible. The law school dean reported back that the faculty of that school had voted unanimously to continue to offer the professors part-time employment with the law school and part-time employment with the legal services program, and had recommended that they have the option of being full-time faculty members. The chancellor responded to this, writing that "members of the faculty of the School of Law will no longer be associated with the OEO program after its termination on or about June 30, 1968." Subsequently the two professors were instructed that they could not work part-time as attorneys with the legal services program and that they either accept or reject the offer of full-time employment at the university with the condition that acceptance precluded employment with the legal services program.

The two professors refused to accept or reject the conditions set by the university and charged that their rights to academic freedom, freedom of expression, and equal protection were being violated, in view of the fact that other faculty members were permitted to teach part-time while practicing law.

The appellate court agreed with the professors that the question raised was whether a state university law school which permits outside and part-time employment by its faculty members, can adopt a rule that singles out an OEO legal services program as the sole activity in which faculty members may not be employed. The school officials maintained that the question was whether the university may refuse part-time employment to a faculty member when his outside employment will seriously interfere with the faculty member's regular university work.

The court was unwilling to take the position that the professors had a constitutional right to participate in an OEO program or that they had a constitutional right to be employed part-time while teaching at the law school. However, the appellate court held that the professors did have a constitutional right not to be treated differently by the university than other members of the same class. The court pointed to several examples of outside legal work being performed by both full-time and part-time members of the law school faculty, and referred to evidence that the faculty of the law school had voted to continue the offer of joint employment and that there was no dissatisfaction with the professors' work as teachers.

The appellate court was unable to agree with the lower court holding that the part-time employment would be detrimental to the quality of instruction received by the students. In fact, the appellate court noted, the evidence strongly suggests that the opposite is true. It was clear to the appellate court that the only reason the university made a decision adverse to the two professors was that "they wished to continue to represent clients who tended to be unpopular." This distinction, the court said, cannot be constitutionally upheld. The decision of the lower court dismissing the complaint of the professors was reversed and the case was remanded to the court with directions that the requested declaratory and injunctive relief be granted.

Pennsylvania

Miller v. Parsons
313 F.Supp. 1150
United States District Court, M.D. Pennsylvania,
June 5, 1970.

A discharged teacher of Lock Haven State College brought suit under the federal civil rights act, alleging that his "civil right to teach" had been violated. The school officials moved to dismiss the complaint. Their arguments included the following: that the right to teach was not enumerated in the Bill of Rights of the federal Constitution, that the civil rights act was applicable only "in cases where dismissal from public employment is alleged to be discriminatory because of racial or religious overtones."

The court did not reach a decision on whether there was "a civil right to teach" or the right to public employment, including tenure. In considering the argument that the civil rights act was inapplicable to this case, the court said that the "suggestion that only cases involving 'racial or religious overtones' are cognizable" under the civil rights had been specifically rejected by a higher court. Without considering the merits of the alleged facts in the teacher's complaint, the court held that the complaint stated a claim under the act.

The final argument for dismissal made by the college officials was that they were not "persons" under the act. The teacher sought relief against the president and the board of trustees without indicating whether the president was sued in his individual or official capacity. The board of trustees was sued as a collective body. The court held that the president both individually and in his official capacity was a proper "person" within the scope of the act, but that the board of trustees as a collective body solely in its official capacity was not. The motion of the president to dismiss the case was denied. The complaint against the board was dismissed without prejudice with permission granted for the teacher to amend the complaint so as to properly include the individual board members.

Texas

Bonner v. Texas City Independent School District
305 F.Supp. 600
United States District Court, S.D. Texas,
Galveston Division, September 2, 1969.

A black high-school teacher who was not rehired by the Texas City school district for the 1965-66 school year brought suit against school officials alleging that his Fourteenth Amendment rights had been violated. He later amended his complaint to seek relief for all black teachers similarly situated. The teacher contended that the school district refused to re-employ him because of his race, pursuant to a policy not to allow black teachers to teach in the newly integrated high school. He asked for an injunction requiring the school officials to offer him a teaching contract and to refrain from maintaining any policy of discrimination, and for back pay and punitive damages.

The school district's defense was that it had failed to rehire the teacher because he was a poor teacher and be-

cause he had failed to work harmoniously with his superiors, not because of his race.

Extensive evidence produced at the trial regarding the relationships the teacher had with his superiors, including the principal of the black high school at which he had been teaching, was unfavorable to the teacher. The court concluded that the school officials had proved beyond a reasonable doubt that race and the district's desegregation plan had nothing to do with the decision not to rehire the teacher. Rather, he had not been retained because the board found him unfit to teach.

The court also found that a class action could not be maintained. Of the four other black teachers whose contracts were not renewed, three testified that they did not wish to participate in the action in any way. The fourth testified that she would participate only in a suit for damages, not one for injunctive relief.

The complaint of the teacher was dismissed.

McDonald v. Marlin Independent School District
313 F.Supp. 1162
United States District Court, W. D. Texas,
Waco Division, November 10, 1969.

Two black elementary-school teachers who were not rehired by the school district for the 1969-70 school year brought suit under the federal civil rights act, alleging that the refusal to renew their contracts was because of their race. The teachers also claimed that the decision not to renew their contracts was based on the school board's unwillingness to assign black teachers to schools attended by white pupils. The school board denied that racial prejudice was a factor and countered by arguing that the teachers had not exhausted their administrative remedies; that the number of teachers in the district had been reduced, thus necessitating a reduction in personnel; that the district did have white and black teachers in schools where their race is in the minority; and that the teachers were unsatisfactory.

Both sides had stipulated during the trial that the only issue was whether the failure to renew the contracts was because of the teachers' race or color.

No evidence was offered by the teachers to show racial prejudice other than their own testimony and the allegation that the school district was not completely integrated. The school district, on the other hand, introduced evidence to show that 20 percent of the district's black teachers taught in predominantly white schools, and also introduced testimony of the principal of the school where the teachers were assigned to the effect that the contracts of 20 black teachers in the school were renewed and that the contracts of the two teachers in this suit were not renewed because the principal thought that they were not competent enough to be rehired.

Based on this evidence the court concluded that the teachers were not discriminated against because of their race. On the contrary, the evidence showed that the district was making substantial progress in integrating the schools and the faculty and that the district was attempting to recruit black teachers, and had employed seven black teachers as new teachers for the system, three of them to replace white teachers.

The court also noted that the teachers were afforded an opportunity to appeal the decision of the superintendent not to rehire them, but they failed to do so. The court said that this would have been the proper procedure to follow. A judgment was entered in favor of the school district.

Wisconsin

Abel v. Gousha
313 F. Supp. 1030
United States District Court, E.D. Wisconsin,
June 24, 1970.

A discharged teacher brought suit under the federal civil rights act against the superintendent of the Milwaukee public schools and other school officials, alleging that her discharge was for participation in demonstrations in violation of her constitutional rights of free speech. She sought reinstatement and damages. The defendant officials moved for a judgment on the pleadings, contending that the complaint did not present a cause of action, and that they were not "persons" under the federal civil rights act.

The court held that insofar as the teacher sought damages against the school board, her complaint must fail since under the federal civil rights act damages could be recovered only from a "person" and the school board was not a person within the meaning of the act. The teacher also sued the individual members of the school board, alleging that they acted as a body in improperly discharging her. Since the gist of the complaint was that the members acted as a corporate body, and no individual action by any was complained of, it was the opinion of the court that the complaint did not state a cause of action against these individual defendants and dismissed them as parties in their individual capacities.

The court did, however, believe that the complaint of the teacher stated a cause of action. Citing the *Pickering* case, the court said that a teacher in a public school could not be discharged for exercising constitutionally protected freedoms. On the present state of the record in this case, the court could not determine whether the discharge stemmed from constitutionally impermissible reasons or from lawful grounds. Accordingly, the court would not grant the motion of the school authorities to dismiss the action. The portion of the teacher's suit for damages against the school board and the individual members was dismissed, but the action against the school board with regard to the demand for reinstatement was retained.

MISCELLANEOUS

California

Stevens v. Board of Education of San Marino Unified School District
88 Cal.Rptr. 769
Court of Appeal of California, Second District, Division 5, July 27, 1970; rehearing denied August 20, 1970.

(See page 12. Involved interpretation of the statute providing for leave of absence for personal emergencies.)

Florida

Connell v. Higginbotham
305 F. Supp. 445
United States District Court, M.D. Florida, Orlando, Division, October 30, 1969.

Certiorari granted, 90 S.Ct. 1865, June 8, 1970.

A public-school teacher sought on behalf of herself and all others similarly situated a judgment declaring the statutory loyalty oath required of state employees in Florida unconstitutional. The teacher began her duties as a substitute teacher without being informed of the necessity of signing the oath. Shortly thereafter when she refused to sign the oath, she was informed by the Orange County school board that she could not be paid for any past or future services until she executed the oath, but that she would be allowed to remain in her position without pay pending a judicial decision on the matter. The district court denied the teacher's motion for a temporary restraining order. The teacher was then dismissed after serving seven weeks without compensation.

The school officials named in the suit argued that the teacher had no standing to bring the action. It was contended that she was only a prospective employee allowed to teach temporarily because the local school board had never given final approval to her employment. The court rejected this argument since it was apparent that the administrative agents of the district contemplated no reason why the teacher would not be approved, and in fact approval by the board was a routine matter after recommendation by the superintendent. The court said that if the statute in question is unconstitutional, the teacher is injured by the board's refusal to employ her, based on her failure to execute the oath and the injury exists whether she is a permanent or temporary teacher.

The school officials also argued that the teacher could not bring a class action since she was not a proper representative of a class of state employees since her application for employment had not been ruled on by the board, and, therefore, she was not a full-fledged state employee. The court found that the teacher met the requirements for a class action in that she was seeking employment with a state agency and a requirement of that employment was the oath.

The statutory oath in question required state employees to swear or affirm that they would support the state and federal constitutions and provided in part "that I am not a member of the Communist Party; that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party; that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence; that I am not a member of any organization or party which believes in or teaches, directly or indirectly, the overthrow of the Government of the United States or Florida by force or violence."

The statute had been the subject of prior litigation, and the Supreme Court of the United States had ruled that the clause "that I have not and will not lend my aid, support, advice, counsel or influence to the Communist Party" was so uncertain and vague that the state, consistent with the due process clause of the Fourteenth Amendment could not force the employee to take the oath (*Cramp v. Board of Public Instruction*, 368 U.S. 278 (1961)). The district court was bound by this pronouncement.

The court then considered the portions of the oath that required the taker to forswear membership in the Communist Party or any organization or party that believed in or taught the overthrow of the federal or state governments by force or violence, and found them unconstitutional. In ordering the clauses stricken from the oath, the court said that cases striking down similar language were legion. "Recent cases of the Supreme Court of the United States have pointed out that knowing membership cannot be restricted without a showing of a specific intent to further the unlawful aims of the organization."

Final consideration was given to the clause, "that I do not believe in the overthrow of the Government of the United States or of the State of Florida by force or violence." The court held that this clause merely attempted to keep out of state employment those who were *personally* opposed to the democratic process and its inclusion in the oath was constitutional. Also held constitutional was the section in the oath requiring support of the federal and state constitutions for the reason that the legitimate exercise of freedom of speech and association was not restricted by such an oath.

The court ruled further that the teacher was under no obligation to execute an oath containing the unconstitutional language. Since during the time she was actually teaching, no wholly constitutional oath was offered to her for execution, she should be paid salary for the seven weeks she actually taught. Further, dismissal of the teacher for

refusing to sign an invalid oath was impermissible, and she was entitled to the salary that she would have received to the end of the school term in June.

NOTE: On June 7, 1971, the Supreme Court of the United States affirmed the holding of the district court as it pertained to the section of the oath requiring applicants to pledge to support the state and federal constitutions. However, the district court decision was reversed to the extent that it upheld the portion of the oath requiring the taker to swear that he did not believe in the overthrow of the government of the United States or the State of Florida by force or violence. The Supreme Court held that this portion fell within "the ambit of decisions of this Court proscribing summary dismissal from public employment without hearing or inquiry required by due process" (39 *U.S. Law Week* 4722).

Illinois

McLaughlin v. Tilendis
253 N.E.2d 85
Appellate Court of Illinois, First District,
Fourth Division, September, 1969, rehearing
denied October 24, 1969.

(See *Teacher's Day in Court: Review of 1968*, p. 27.)

Two Illinois teachers brought an action against the school superintendent of School District 149 for slander and malicious interference with contract. The trial court dismissed the action and the teachers appealed.

While both teachers were on probationary status with the school district, they engaged in the organization of a teachers union. They alleged in part that because of this union activity, which the superintendent opposed, he "embarked upon a course of action designed to defame and discredit plaintiffs, not because of any deficiency in their teaching, but solely because of plaintiffs' union organizing activity." They further alleged that the superintendent informed the school board that their teaching was poor, that they left their classrooms unattended, and that in general they lacked ability as teachers.

The teachers charged that the false statements of the superintendent, relied on by the school board, had caused it to refuse them continued employment; had damaged their professional reputations. Also, that their rights under the state tenure law had been disregarded, and their ability to participate in union affairs had been limited. They sought money damages. The teachers additionally alleged that the superintendent intentionally made the false representations to the school board so that their employment would be discontinued.

The superintendent contended that his remarks were privileged, that they were made at a regularly scheduled meeting of the board of education where one of the items on the agenda was the superintendent's recommendations as to the employment of teachers for the next school year. He also maintained that the alleged remarks concerned the qualifications and teaching abilities of the plaintiffs and thus related directly to the statutory action required of the superintendent to make recommendations to the board concerning the selection of teachers.

After considering the issues involved and previous Illinois cases that raised the same point, the court was of the opinion that "the statements made by the defendant to the Board of Education concerning plaintiffs were communications within the duty of the defendant as Superintendent of School District No. 149, and were absolutely privileged."

The judgment of the trial court dismissing the complaint of the teachers was affirmed.

Louisiana

Gayle v. Porter
239 So.2d 739
Court of Appeal of Louisiana, Fourth Circuit,
July 6, 1970; rehearing denied October 19, 1970.

(See page 13. Concerned payment of salary while a teacher was out sick after exhaustion of sick leave.)

Maryland

Ehrlich v. Board of Education of Baltimore County
263 A.2d 853
Court of Appeals of Maryland, April 6, 1970.

(See page 14. Involved the failure of a teacher to return to the junior college following sabbatical leave.)

Minnesota

Morey v. Independent School District No. 492
312 F.Supp. 1257
United States District Court, D. Minnesota,
First Division, September 8, 1969.

(See *Teacher's Day in Court: Review of 1967, p. 30; Review of 1965, p. 27; Review of 1964*, p. 32.)

Prior to the time a discharged teacher instituted this suit the Minnesota state courts had ruled that the teacher was improperly discharged and ordered her reinstatement with back pay. However, the state district court judge specifically determined that the teacher was not entitled to be reimbursed for any increments in salary during the 1962-1967 period when she was not employed by the school district. The teacher did not appeal this decision, and in 1967 she resumed her employment in the school district.

In this suit brought under the federal civil rights act the teacher sought damages for the failure to pay the increments and defamation of character. Named as defendants were the school district and the past and present members of the board of education. They asked that the suit be dismissed for lack of jurisdiction.

The federal court concluded that it had jurisdiction over the case under the civil rights statute and proceeded to consider the issues. The first claim of the teacher was for lost earnings against the school district. The court concluded that this claim was barred, it already having been adjudicated by the prior state court determination that the teacher was not entitled to salary increments. The federal court also decided that the school district was not subject to suit under the civil rights act because the relief claimed

by the teacher was for money damages rather than equitable relief, the former relief not being permitted under the act.

The court then considered and denied the teacher's claim for lost earnings against the individual defendants because of her failure to allege "the deprivation of any 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." The court noted that there was no Minnesota statute or regulation requiring a board to grant any teacher periodic salary increases and held that the failure or refusal of the board to grant a customary increase did not entitle the teacher to bring an action in federal court under the civil rights act.

The third claim of the teacher was for damages because of alleged defamation of character and injury to her professional reputation. The court held this claim to be without merit because such damages are not recoverable under the civil rights act. Further, the claim for defamation was also barred because of the statute of limitations. While the federal act does not contain a time limit on suits, the Supreme Court has held that the state statute of limitations is applicable. In this instance that would be two years. Since suit was not brought within this time, the claim for damages for defamation was dismissed.

New Jersey

O'Connor v. Harms
266 A.2d 605
Superior Court of New Jersey, Appelate Division,
July 7, 1970.

A high-school principal sued the board of education, five individual members of the board, the mayor, and the superintendent of schools for malicious interference with his employment contract. He sought compensatory and punitive damages. The jury granted a verdict in favor of the principal for compensatory damages against the board and for punitive damages against each of the individual defendants. The defendants appealed.

The contract between the principal and the board of education provided that it could be terminated by either party upon 60 days' written notice. The contract was rescinded by the board, and the principal was paid for the 60 days.

The appellate court found that the compensatory damages of $9,600 awarded the principal against the board of education only was evidently the loss of salary from the time his salary from the board ceased and he began his new employment. This suggested that the jury mistakenly treated the action as a breach of contract, a theory the trial court expressly ruled out of the case. The appellate court said that the action against the school board was in the nature of the tort of malicious interference with a contractual relationship. An essential element of that tort is malice. The court held that the school board as a public corporation could not entertain malice, nor was the school board liable vicariously for the personal malice of its officers and employees. For these reasons, the judgment against the school board was reversed.

In reviewing the judgment against the defendant board members, the appellate court assumed the evidence raised a jury question as to whether they acted with malice since the jury awarded punitive damages against each member. The appellate court found that the board members who voted to terminate the principal's contract had a legal right to do so, and in fact had a duty as public officials to cast their votes as their consciences dictated. It noted that at the time the contract was terminated, the school situation, in which the principal played a part, was a tense and worsening one with a fight looming for appointment to the post of superintendent. The fact that the board members voted to terminate the principal's contract under these conditions did not negate the fact that they had a legal right to do so. And the exercise by the board members of this legal right for a valid reason did not give rise to an actionable wrong merely because there might have been some malice. Additionally, the jury judgment was for punitive damages, without even an award of nominal compensatory damages. The absence of compensatory damages, the appellate court said, raised the inference that the jury did not find a violation of a legal right, but instead suggested a punishment for malice. Since malice alone without violation of a legal right is not actionable, the judgment against the defendant board members was reversed.

Likewise reversed were the judgments for punitive damages against the mayor and the superintendent of schools. The superintendent, acting on specific request of a board member, in recommending termination of the contract as being in the best interests of the schools, was acting in conformity with his rights and duties, even though his motivations may have been mixed. The mayor, in speaking publicly on the issue without mentioning the principal by name was also within his rights.

Porcelli v. Titus
261 A.2d 364
Superior Court of New Jersey, Appellate Division,
November 7, 1969.

Ten members of the teaching staff of the Newark public schools appealed from a final decision of the state board of education affirming a decision of the commissioner of education. The commissioner had held that the action of the Newark board, in suspending its promotional procedures and its eligibility lists and in instituting a new policy for promotions, was within the discretionary authority of the board.

A negotiated contract between the Newark school board and the Newark Teachers' Association (NTA) provided that the positions of principal and vice-principal would be filled in order of numerical ranking from an eligibility list based on written and oral examinations. The contract between the two parties was to run from February 1967 to February 1970. To conform to this contract, the board in June 1967 approved an amendment to its rules and regulations providing that all promotional lists would expire after four years' time. Subsequently the board approved resolutions that suspended the eligibility list and instituted new methods of making promotions. The purpose of the board's action was to increase the number of black principals and vice-principals in the school system. At the time the student population was 72.5 percent black. Of the

259 administrative supervisory positions, 27, or 10 percent, were held by blacks.

The teachers who brought this suit demanded a rescission of the actions of the board and an enforcement of the promotional procedures outlined in the contract between the board and the NTA. They argued that the action of the board unlawfully breached the contract between the parties.

The critical question before the court was whether the board had the right to unilaterally adopt an educational policy relating to promotions which was inconsistent with the contract it had voluntarily entered into. The board justified its action on the grounds of statutory authority and educational necessity.

Upon review of the applicable law, the court held that "the decision to suspend and modify the promotional system was consonant with the statutory powers with which the Newark board was vested." In the initial appeal to the commissioner, it had been found that the unilateral action of the board could be sustained only "in the face of a real threat or obstacle to the proper operation of the school system, or in an emergency of equal importance." The commissioner had found that the Newark board deemed it essential to alter its method of selecting and appointing administrative and supervisory personnel for the reason that "the educational needs and aspirations of the school children and the local community were being thwarted by the dearth of representation by Negro staff members in the leadership councils of the schools." The court took judicial notice of the racial disorders that had taken place in Newark in 1967 and said it was only reasonable to assume that school authorities were concerned with the impact such disorders would have on the school children, their parents, the community at large, and the administration of the school system throughout the city.

The court concluded that the record before it and the attendant public events which were judicially noted, supported the findings of the commissioner that "the *ex parte* adoption of new promotional rules by the Newark Board, notwithstanding lack of approval by a majority of the NTA, was 'warranted and appropriate.'" Therefore, the court affirmed the determination of the state board of education that the Newark school board acted lawfully in the particular circumstances.

Porcelli v. Titus
431 F.2d 1254
United States Court of Appeals, Third Circuit,
September 23, 1970.
Certiorari denied, 91 S.Ct. 1612, May 3, 1971.

(See *Teacher's Day in Court: Review of 1969*, p. 53; and case immediately above.)

Under the same set of facts as set out in the case immediately above, teachers appealed from the federal district court decision dismissing their federal court complaint. In the federal court complaint, the white teachers alleged that the use of color in the selection of principals and vice-principals and the device used to achieve that selection, by abolishing or suspending the promotional list, was a violation of their constitutional rights under the Fourteenth Amendment.

The appellate court did not agree with this contention and said that "state action based partly on consideration of color, when color is not used per se, and in furtherance of a proper governmental objective, is not necessarily a violation of the Fourteenth Amendment. Proper integration of the faculties is as important as proper integration of the schools themselves." The appellate court cited numerous cases that placed the duty of breaking up the historical pattern of segregated faculties on the school boards, and added that to permit a great imbalance in faculties (3 black vice-principals out of a total of 136 principals and vice-principals) as existed when the new plan was proposed by the Newark school board to increase the number of qualified black administrators, would negate the Fourteenth Amendment. The appellate court affirmed the district court dismissal of the teachers' complaint.

NOTE: The Supreme Court of the United States declined to review this case.

State of New Jersey v. Besson
266 A.2d 175
Union County Court, Law Division,
New Jersey, May 27, 1970.

A high-school teacher was convicted of interfering with school assembly and trespass on school property, both criminal offenses. He appealed his convictions on the two charges.

The interference charge arose from conduct of the teacher at a high-school assembly when he rose from his seat, announced that he was leaving because of the school's failure to hang a particular mural in the school, and walked out. Although the testimony was in conflict as to the amount of disruption caused by this action and the number of students who also walked out, it was conceded that the program did continue. The statute under which the teacher was prosecuted provided that any person "who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person." The court found that the conduct of the teacher at the assembly did disturb and interfere with the quiet and good order of the assembly. The court also found that the remarks were not spontaneous as the teacher conteded and that the teacher should have known that his action would disrupt the assembly.

The court said that it was aware that teachers as well as students retain their constitutional rights while in school but that the teacher's conduct in this instance could not be upheld under the First Amendment right to free speech. The portion of the lower court judgment finding the teacher guilty of interferring with a school assembly was affirmed.

The second charge against the teacher involved his unathorized presence in the school parking lot two days after the assembly incident. He, another teacher, and some parents and students were conducting a quiet and orderly "vigil of protest." He had been advised by the principal that

having been suspended the day before, he was trespassing and that the police would be called if he continued to remain on school premises. The state contended that school property is private in nature and that the teacher's presence without permission constituted a trespass. The teacher on the other hand contended that the property was public; and that as such there is no trespass when an individual is in the exercise of his constitutional rights on the property. The teacher also argued that even if the property were private, his conduct was permissible.

The court held that the board of education pursuant to statute had title to the property in question, but that the board did not enjoy the same dominion over the property as a private individual would have over property that he owned. The ownership of the school property is in the local board as trustee for the public. As such, the school board could protect the property and the educational processes from any disturbance or interference but its action must be balanced against the right of the public to enter for lawful reasons. It was the opinion of the court that "school property is of such public character that a mere entry thereon cannot, in and of itself, constitute a trespass." The court held that since the teacher's actions and conduct were confined solely to one area of the parking lot and since he and the others with him were quiet and orderly, his presence in the parking lot did not constitute a trespass. The conviction on the trespass charge was reversed.

New York

Teachers Association, Central High School District No. 3 v. Board of Education, Central High School District No. 3, Nassau County
312 N.Y.S.2d 252
Supreme Court of New York, Appellate Division, Second Department, June 27, 1970.

(See page 60. Concerned the payment of accumulated sick leave to the estate of a deceased teacher.)

Zuckerman v. Board of Education, Central High School District No. 3
314 N.Y.S.2d 814
Supreme Court of New York, Appellate Division, Third Department, October 26, 1970.

The board of education appealed from a decision of the Workmen's Compensation Board which found that a teacher had been injured in the course of his employment. The teacher had sustained a ruptured Achilles' tendon while participating in a college scholarship benefit basketball game, between members of an association composed of teachers and athletic coaches under the school board's jurisdiction.

The Workmen's Compensation Board had found that the activities of the game "were so interwoven with the employment. . .as physical teachers and athletic coaches" as to come within the scope of the Workmen's Compensation Law. The school district's director of physical education and athletics had arranged for the publicity, photographs, and announcements during school time. The tickets were printed in the school print shop and sold in the schools. The game was played in a school gymnasium and a large amount of the proceeds of the game was donated to the school district to provide scholarships for needy children.

Upon this record the court held that the compensation board was justified in finding that the scope of the school district's interest, participation, and control was sufficient to bring the event within the course of the teacher's employment. The decision of the board was affirmed.

Ohio

State ex rel. Sandbach v. Roudebush
256 N.E.2d 624
Court of Appeals of Ohio, Butler County, April 7, 1969.

A teacher who was not re-employed for the 1968-69 school year sought a declaration that the decision of the board was null and void and an order that her employment be continued. Between the time the suit was brought and the case was heard, the teacher found other employment as a school teacher in Florida. Under these circumstances the court held that the case was moot for no judgment it might render could be carried out since the determination sought by the teacher could have no practical effect upon the controversy.

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